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75-965

IN THE

Supreme Court of the United States

October Term, 1975

JAMES STRONG, *et al.*,

Petitioners,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PAUL G. REILLY, JR.
1414 Avenue of the Americas
New York, New York 10019
Attorney for Seneca Cayuga Tribe of Oklahoma

PAUL G. REILLY
Of Counsel

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JAMES STRONG, *et al.*,

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vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

The Seneca Cayuga Tribe of Oklahoma* respectfully prays that a writ of certiorari issue to review the judgment and the Order of the United States Court of Claims entered in this proceeding on May 30, 1975 in respect of which a motion for rehearing was denied by Order of that court dated October 10, 1975. This petition is being filed simultaneously with another petition for review of orders of the Court of Claims of the same date upon similar grounds but related to an earlier treaty (1805). The issues are identical though the parties to be affected are different by virtue of the differences in use and occupation. It is requested they be read together.

* The Seneca Cayuga Tribe of Oklahoma was the petitioner in Dockets 341C and 341D before the Indian Claims Commission. These Dockets were consolidated for trial with six other Indian tribes who had claimed title to portions of the area involved, whose names and docket numbers will be found in the Opinion of the Indian Claims Commission set forth in Appendix B.

Opinions Below

The Court of Claims entered an Order on May 30, 1975 approving and affirming the decision and Order of the Indian Claims Commission and remanding the case to the Commission for further proceedings. No opinion was rendered other than a recital in the Order that the Findings of Fact made by the Indian Claims Commission could have been fuller and more extensive. Judge Bennett dissented, in part, from the conclusion stated in the Order. The Order and the dissent are reprinted in Appendix A. The Order of October 10, 1975 denying the motion for rehearing is also reprinted in Appendix A.

The opinions and findings of the Indian Claims Commission, 30 Ind. Cl. Comm. 8 and 31 Ind. Cl. Comm. 359 are reprinted in Appendices B and C.

Jurisdiction

The judgment of the Court of Claims was entered on May 30, 1975. A motion for rehearing was made and an Order denying such motion was made and entered on October 10, 1975. No extensions of time to petition for certiorari were sought. This Court has jurisdiction under 25 U.S.C. §70s(c) and 28 U.S.C. §1255.

Questions Presented

Where as detailed in the statement of the case: The ancestors and predecessors in interest of the petitioner used and occupied as Indians the area ceded to the United States under the terms of the Treaty of Fort Industry (7 Stat. 87,

July 4, 1805) from as early as 1742 until the treaty date and under which treaty they are described as living with named parties to the treaty and were to receive a portion of the purchase price and for whom the representative of their ancestors separately signed the Treaty of Greeneville (7 Stat. 49, August 3, 1795) in a manner clearly indicating the separate identity of the tribal group on whose behalf he was acting, THE QUESTIONS PRESENTED ARE:

1. Is an Indian tribe separately signing the Treaty of Greeneville (7 Stat. 49), though not named in the preamble and admittedly occupying portions of the lands ceded in the "follow-up" treaty barred from recovering a portion of a conscionable consideration by reason of the omission of its name from the preamble of the treaty and thus derived no rights thereunder?

2. Is an Indian tribe whose ancestors and predecessors in interest used and occupied for upwards of 60 years portions of lands ceded to the United States barred from recovering a conscionable consideration under the Indian Claims Commission Act because more than one tribe shared such use and occupancy within the bounds of the particular lands ceded where the only finding by the Indian Claims Commission of such use and occupancy was a single summary one of joint use and occupancy by various tribes including the ancestors of petitioner herein?

3. Is it morally just and equitable and consonant with the "fair and honorable dealing" prescribed within the aims and purposes of the Indian Claims Commission Act to deny compensation to one tribe on the basis of a technical interpretation of a recently stratified legal principle

and award that share of the compensation which might have been awarded to the petitioner, absent such technicality, to other tribes some of whom did not use and occupy the lands in as extensive a manner, both as to time and area?

4. Should not this Court re-examine the purposeful rigidity with which the Indian Claims Commission and the Court of Claims have applied the general principles describing aboriginal title as related to the compensable interests of Indian occupants, which principles were discussed in *United States* v. *Santa Fe* (314 U.S. 339), which rigidity denies to Indians their own right of shared occupancy and confers its economic benefits to others, and in certain cases to the United States, in violation of the express promise made by the United States in 1795?

Statutes and Treaties

Pertinent provisions of the Treaty of Greeneville of August 3, 1795 (7 Stat. 49) are set forth in Appendix D.

Statement of the Case

The petitioner, Seneca Cayuga Tribe of Oklahoma consists of decendants of various Iroquois Indians at one time members of the Six Nations and its constituent tribes* who for many years and up until the treaty date, used and occupied lands now in the State of Ohio and which lands were acquired by the United States under the terms of two Treaties: September 29, 1817, 7 Stat. 160 and September

* A confederacy consisting of the Seneca, Cayuga, Mohawk, Onondaga, Oneida and Tuscarora Nations.

17, 1818, 7 Stat. 178. At various times during the period of occupancy the ancestors of the petitioner were generally referred to as "Mingos", "Senecas", "Senecas of Ohio, Senecas of Sandusky", "Mohawks" and "Six Nations of Sandusky".*

These Indians used and occupied portions of the area from as early as 1742 and continuously up until 1817. The use and occupancy was not exclusive, but was joint and amicable with one or more Indian tribes. The number of joint and amicable users was somewhat dependent upon the time and the then existing conditions but at no time was there evidence of inter-tribal hostility. The contrary was frequently evidenced by joint occupancy of the same villages.

The nature and extent of the use and occupancy by petitioner's predecessors in interest will be found in Appendix E which contains a portion of the proposed findings submitted by petitioner to the Indian Claims Commission.

On August 3, 1795 at Greeneville the United States entered into a treaty with a group of Indian tribes then belonging to a combination called the Northern Confederacy who were situated in the old Northwest Territory. 7 Stat. 49. Among the signers was one Reyntueco "1 of the Six

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* *Strong, et al.* v. *United States*, 31 Ind. Cl. Comm. 89, 156, Court of Claims Appeal 1974, June 25, 1975, *cert. denied* December 1975 (Dkt. 75-389).

> "'Mingo' is the term usually used to describe certain Iroquois Indians, largely Senecas, who had left the villages of the main Iroquois Confederacy and formed new settlements in Pennsylvania and Ohio. By the time of the Greeneville Treaty in 1795 they were usually referred to as "Senecas of Sandusky." (See, Hodge, Handbook of American Indians (1907), Part I, at 867)."

Nations living at Sandusky". The United States acquired certain lands and "relinquished" to the Indians lands north and west of a line described in the treaty and "explicitly declared that the meaning of that relinquishment is this: The Indian tribes who have a right to these lands are quietly to enjoy them—and the United States will protect all the said Indian tribes in the quiet possession of their lands.—"

Shortly prior to the treaty of Greeneville, The Six Nations, then and now, residing in New York entered into a treaty with the United States on November 7, 1794 at Canadaigua whereby they agreed to confine themselves to a described territory in New York and relinquished all claims to lands west of New York and Pennsylvania. 7 Stat. 44.

By a treaty dated September 29, 1817, 7 Stat. 160, and a treaty supplementary thereto dated September 17, 1818, 7 Stat. 178, both of which were proclaimed on January 4, 1819 the United States purchased, from a group of Indian tribes, Royce Areas 87 and 88 situated in Northwestern Ohio. Area 87 contained approximately 3,360,000 acres. The Seneca tribe of Indians was one of the parties to and signatories of the treaties and received as its share of the compensation under the 1817 treaty an annuity of $500, a reservation grant of 30,000 acres on the Sandusky river where they then were living and also, jointly with the Shawnee, at Lewiston where they also were living, an additional reservation grant of 48 square miles. Under the supplementary treaty of September 17, 1818 the Senecas received an additional annuity of $500, plus an additional annuity of $1000 jointly with the Shawnee at Lewiston

and each of the reservations granted under the 1817 treaty were enlarged so as to contain approximately 40,000 acres each.

This petitioner asserted no claim in respect to Area 88.

After extensive hearings the Commission on May 23, 1973 entered its decision, findings and order (30 Ind. Cl. Comm. 337, Appendix B). The decision is to the effect that the ownership of Area 87 was Wyandots 50%, Ottawas 30%, Shawnees 10% and Delawares 10%.

The basic principle of the decision was that the Greeneville Treaty recognized title to those tribes and bands of Indians "who were then using and occupying Royce Areas 87 and 88." And that the "follow up" treaty of September 29, 1817 acted as confirmation of the aboriginal title recognized at Greeneville. (30 Ind. Cl. Comm. 337,344).

The Seneca claim was dismissed on the grounds their predecessors "were not signatories to the Greeneville Treaty and acquired no rights thereunder. Furthermore, these Indians did not possess aboriginal title to Royce Area 87 as of January 4, 1819." (30 Ind. Cl. Comm. 337,368).

The Commission made only one general conclusory finding as to use and occupancy confining it to the general conditions in Ohio occasioned by the Revolutionary War and the Indian hostilities ending in 1795 and reiterating statements of mixed use and occupancy. It found a predominant usage by Wyandots and Ottawas, citing 21 Wyandot sites and 24 Ottawa locations in the period 1754-1819, but added

> "But there are a greater number of references to Indians other than the Ottawas and Wyandots in these

areas, particularly to Shawnees, Delawares, Munsees and Mingos after 1780."

The nature of the use and occupancy, to wit, joint and amicable was not controverted or disputed by the Commission or any of the parties in the consolidated proceedings.

The Commission, in Finding 2, determined that when "Reyntueco" signed the original treaty of Greeneville separately and being described therein as "of the Six Nations living at Sandusky" he did so as a member of a group separately described as "Delawares of Sandusky" and not as a signatory thereto on no discernible positive evidence other than the printed edition of the treaty in Statutes at Large published in 1846 (3 Ind. Cl. Comm. 337,345,359), concluding therefrom that "the predecessors in interest of the Seneca Cayuga Tribe of Oklahoma were not signatories to the 1795 Greeneville Treaty and acquired no rights thereunder" (30 Ind. Cl. Comm. 337,363).*

On a motion for rehearing based upon a photocopy of the original copy of the treaty (31 Ind. Cl. Comm. 359, 370, Appendix C) the Commission, after examination of the photocopy of the original document, delineated all of its features that differed from the printed Statute copy which demonstrated the separateness of the signature and of the party described as "of the Six Nations living at Sandusky", and adhered to its original conclusion that the act of signing made him neither signatory nor party and those

* This notion of the identity and affiliation of Reyntueco had never been raised either at the hearings or in the briefs of the parties and was only indirectly suggested by the Commission at an oral argument shortly before rendition of the decision.

for whom he purported to act acquired no rights thereunder. The Commission apparently relying for this last conclusion upon the emphasis placed upon the word "said" in the body of the treaty, cited and quoted from *Sac and Fox Tribe* v. *United States*, 161 Ct. Cls. 189, cert. denied 375 U.S. 921 (1963) (Appendix C).

The Court of Claims made no reference in its order of May 30, 1975 and the order of October 10, 1975 to this issue.

Reasons for Granting the Writ

1. The holdings of the tribunals below, determining that an erroneous editorial composition, made fifty years after the event, of the basic treaty Agreement between the United States and the Indian Tribes living in the Northwest Territory, setting forth the rights and interests of the Indians, to be the controlling basis for determining the parties who are to be the beneficiaries of that treaty, are flagrantly wrong.

The refusal of the Indian Claims Commission to recognize a party, clearly identified as a signer of the Greeneville Treaty, to be a beneficiary of the solemn promise of the United States given as the prime consideration for the cessation of ten years of hostilities is an act of gross injustice. It also typifies the expression "speaking with a forked tongue".

The Greeneville Treaty gathering was not some casual "get together" to which any passerby would be invited to "come on in and sign this petition" for some political purpose such as zoning. It was a most important diplomatic event and only the representatives of those Indians who

were concerned and were to be affected were present. The Six Nations of Sandusky, or Mingos or Senecas were there. The Treaty Journal bears this out. Every signer of the Treaty, including Anthony Wayne, signed as a representative and the document clearly shows their representation. If all Indian signers other than Reyntueco signed as representatives what then makes him so unique? We can hardly ascribe the action as being a mere courtesy extended to the seeker or giver of autographs. Treaties ratified by the United States Senate are not to be dealt with so lightly.

The Commission has attempted to denigrate the presence, the signature and the identification separate from another tribe living in the described location in its effort to sustain its earlier *ipse dixit* that petitioner's predecessors in interest were not "signatories" by shifting its emphasis to the omission of the name from the preamble and the frequent use of the word "said" in the body of the treaty which contains the agreements. It is to be remembered that the agreement was not prepared by or with the Indians. It was a document of presentation, acceptance or else! Few if any changes occurred between presentation and acceptance. In whose favor is the document to be construed? If only those named in the preamble were to be "signatories" what created the necessity for the separate signing by and for the Six Nations of Sandusky, an identification written not by Reyntueco, but presumably by the draftsman of the instrument? The signature was required only if it was the meaning and intent that those Indians were to be affected and bound by the Treaty. That obtaining the signature may have been an afterthought, a not uncommon occurrence at large and complicated real estate closings held under great pressure does not in any way mitigate or obviate the obligations of the signatory.

The Commission has placed reliance upon *Sac and Fox Tribe* v. *United States*, 161 Ct. Cls. 189 for its determination that petitioner's predecessor in interest was not a signatory of the Treaty. There is a very stark difference between the Sac and Fox and the Senecas. The Sac and Fox were not present at Greeneville; they did not sign the document and they did not cede any lands. The Senecas were present; they signed the document and they ceded their interest in the lands conveyed under the treaty terms.

Since it is readily evident that the "signatory" is separate from and independent of those who signed above him, what effect is to be given to this act? Is the "signatory" deemed not to be a party bound and benefited if not listed in the preamble nor embraced within the narrowest possible literal construction of the word "said"; that then the act is nugatory and meaningless? Or rather is it not the declaratory and meaningful interpretation that the "signatory" is a party bound and affected by and the beneficiary of the agreements expressed in the documents so signed?

The foregoing may seem to be rhetorical belaboring of a single fact in a complex web of events, but when one thinks upon the consequence, one is faced with the realization that here at the beginning it is the end, for the Commission has inexorably applied its conceived doctrine of "exclusive exclusivity" resulting in an absolute foreclosure.

2. The incongruity of the judgments below

The judgments below, by refusing to recognize the compensable interests of the petitioner and then blithely awarding the title to their heritage in equal shares to five other

tribes in Areas 53 and 54 and to four tribes in varying percentages in Area 87, have effected an insupportable rationing of justice.* And as Judge Bennett noted in his dissent from the order of affirmance of May 30, 1975, Appendix A of 1817 Treaty Case, it is indeed too rough to be just.

This petitioner has been deprived of the rights ostensibly given to it under the Greeneville Treaty and they are taken away for no obvious reasons other than a simplistic attempt to confine the meaning and effect of an agreement by the most literal interpretation of the document fortified perhaps by a disinclination to labor in the manner required by the statute, 25 U.S.C. 70n, and as prescribed by the Court of Claims in *Snake or Piute Indians* v. *United States*, 125 Ct. Cls. 241 and possibly a pride of authorship.

Once it has been determined that petitioner's predecessors in interest were not signatories, life becomes simple because have they not said they shared the use of the land with others even to the extent of particularizing with whom and in what place? No exclusivity! That forecloses that claim.

No need to consider Indian possession or occupation with respect to their habits or mode of life (*Mitchell* v. *United States*, 9 Peters 711, 745).

No need to consider the difference between a society founded upon a system of private exclusive property and a society organized primarily upon a communal system.

* Although the Commission rendered separate decisions for each of the 1805 and 1817 treaty transactions the issues involved and the evidence presented were identical with minor exceptions in respect of use and occupancy. Cf. Findings 8 in both cases, Appendix B. And it was agreed that the total of the evidence was submitted in each case.

No need to consider the evidence submitted in substantiation of the assertion of use and occupancy as set forth in Appendix E.

No need to accept the observations and judgments of Lewis Cass and Duncan MacArthur who, when reporting on their negotiations for the 1817 Treaty, stated:

> —"The Wyandots who owned it, and the Senecas and Shawnee who live upon it"—
>
> —"The ancestors of some of these Indians have occupied it for generations"—
>
> —"In fact the whole of the Wyandots and all the Shawnees and Senecas in this quarter have made the last attempt to preserve the inheritance of customs and land transmitted to them by their ancestors."

Nor is there any need to consider the opinion of the Public Lands Committee of the United States Senate when, reporting the Treaty to the Senate with amendments for approval, it stated:

> —"To the Senecas, who made no cession, but are considered as co-partners with the Wyondots"—

All of this has become irrelevant.

Now comes the last problem. If the Senecas did not have a recognized title or an aboriginal title to the lands they used and occupied, what effect does this conclusion have upon the title of the remaining claimants?

At this point the Commission, relieved of the labor of dealing with aboriginal title and seemingly unwilling to deal with the last question, perhaps in an effort to be generous even though not just, proceeded to assess the pro-

portionate interests of the remaining users and occupiers as holders of recognized title and awarded "the whole thing" i.e., recognized title to the whole of the areas including that which has been denied to petitioner by virtue of the Commission's action, to five other tribes in equal shares in respect of Areas 53 and 54 and to four tribes, one of whom was a sometime co-partner of the Senecas in varying percentages. This is accomplished in each case by means of a single conclusory finding, general in content.

Parenthetically it may be noted that one of the recipient tribes of the Seneca heritage in Areas 53 and 54 had only the most tenuous, if any, connection with the areas. In Area 87 the co-partner of the Senecas receives the major share of the Seneca heritage but it may be noted that was a partnership that has been long dissolved.

The incongruity, let alone the injustice, is apparent. It might be epitomized by stating the effect of the Commission's decision thusly

> He who had something has had it made nothing and taken from him and that nothing has been made something.

Justice is a word much abused, but these judgments are an abuse of justice and cry out for correction.

We are not unmindful that this Court has recently refused to review the judgment of the Court of Claims affirming in part the order of the Indian Claims Commission in *Strong* v. *United States,* cert. denied, December 1975 (Dkt. 75-389), but we suggest the instant decisions portray a result which bogles the mind and should not be allowed to stand as an example of justice under law.

The Indian Claims Commission was not created for the purpose of honing broadly stated principles into the thinnest and sharpest cutting edges for use in developing a finely constructed system of legal reasoning. Rather it was intended, though perhaps not perfectly constructed, as a mechanism for achieving solutions that could be called fair and honorable for the long standing complaints of a disadvantaged group. Its semi-political purpose overshadows its legal mechanisms. One unjust result tarnishes its honorable purpose and leaves all of us, let alone the petitioner, poorer.

Conclusion

For the foregoing reasons the writ of certiorari to the United States Court of Claims should be granted.

Respectfully submitted,

PAUL G. REILLY, JR.
1414 Avenue of the Americas
New York, New York 10019
Attorney for Seneca
Cayuga Tribe of Oklahoma

PAUL G. REILLY
Of Counsel

Appendix A

Order of Court of Claims and Dissent of Judge Bennett, May 30, 1975 and Order of Court of Claims Denying Motion for Rehearing, October 10, 1975

Appeal No. 4-74

IN THE

UNITED STATES COURT OF CLAIMS

JAMES STRONG, *et al.*

v.

THE UNITED STATES

Before SKELTON, *Judge,* Presiding, KUNZIG and BENNETT, *Judges.*

Order

This case comes before the court on appeal by various Indian Tribes from decisions and orders of the Indian Claims Commission in 30 Ind. Cl. Comm. 337, of May 23, 1973, and 31 Ind. Cl. Comm. 359 of September 19, 1973. After consideration of the record, the briefs, and oral argument of counsel, the court concludes that while it would have been helpful if the findings of fact could have been fuller and more extensive, the findings as made support the decision and order of the Commission and the same

are supported by substantial evidence. We conclude further that there is no error of law in the decisions and orders of the Commission and that the same should be affirmed.

Accordingly, the decisions and orders of the Commission are approved and affirmed, and the case is remanded to the Commission for further proceedings in accordance with this order.

May 30, 1975

By The Court

Byron Skelton
Presiding Judge

(Judge Bennett's dissent is attached.)

Bennett, *Judge,* dissenting.

The views expressed in my dissent to *James Strong, et al.* v. *United States,* Appeal No. 3-74, issued this day, are adopted here by reference. I think in all sincerity what the Commission has attempted here is to do "rough justice" but it is too rough to be just. I would remand.

Order of Court of Claims and Dissent of Judge Bennett

IN THE

UNITED STATES COURT OF CLAIMS

App. No. 3-74

JAMES STRONG, *et al.*, etc. and Related Cases,
Appellants,

App. No. 4-74

JAMES STRONG, *et al.*, etc. and Related Cases,
Appellants,

App. No. 5-74

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN, *et al.*,
Appellants,

v.

THE UNITED STATES, *et al.*,
Appellees.

Before SKELTON, *Judge,* Presiding, KUNZIG and BENNETT, *Judges.*

Order

These cases come before the court on a joint motion for rehearing *en banc* filed by the Delaware, Ottawa and Seneca-Cayuga, appellants, in App. No. 3-74; a joint motion for rehearing *en banc* filed by the Ottawa, Seneca-Cayuga, Potawatomi (Prarie Band) and the Potawatomi (Citizens Band), appellants, in App. No. 4-74; and, an "application"

(motion) by the Ottawa appellants for rehearing *en banc* in App. No. 5-74, all said motions having been filed on June 18, 1975, and deemed to have been filed pursuant to Rules 7(d) and 151. Upon consideration thereof, together with the opposition thereto, without oral argument, by the six active Judges of the court (Judge Kashiwa not participating) as to the suggestions for rehearing *en banc* under Rule 7(d), which suggestions are denied, and further having been so considered by the panel listed above as to the motions for rehearing under Rule 151,

IT IS ORDERED that the said motions and application for rehearing be and the same are denied.

Oct. 10, 1975

BY THE COURT

BYRON SKELTON
Judge, Presiding

Appendix B

Opinion, Findings and Order of Indian Claims Commission. 30 Ind. Cl. Comm. 8

BEFORE THE

INDIAN CLAIMS COMMISSION

Docket No. 13-F

JAMES STRONG, *et al.*, as the representatives and on behalf of all members by blood of the CHIPPEWA TRIBE OF INDIANS,

Docket No. 15-I

THE POTTAWATOMIE TRIBE OF INDIANS, THE PRAIRIE BAND OF THE POTTAWATOMIE TRIBE OF INDIANS, *et al.*,

Docket No. 18-K

RED LAKE BAND, *et al.*,

Docket No. 27

THE DELAWARE TRIBE OF INDIANS,

Docket No. 29-G

HANNAHVILLE INDIAN COMMUNITY, *et al.*,

Docket No. 64-A

SHAWNEE TRIBE OF INDIANS OF OKLAHOMA, *et al.*,

Docket No. 89

THE SIX NATIONS, *et al.*,

Opinion, Findings and Order of Indian Claims Commission

Docket No. 133-C

THE OTTAWA TRIBE, and GUY JENNISON, *et al.*,
as representatives of THE OTTAWA TRIBE,

Docket No. 141

LAWRENCE ZANE, *et al., ex rel.*, WYANDOT TRIBE, *et al.*,

Docket No. 308

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, *et al.*,

Docket No. 341-D

THE SENECA-CAYUGA TRIBE OF OKLAHOMA, and PETER BUCK,
et al., members and representatives of members thereof,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

Decided: May 23, 1973

Appearances:

Robert C. Bell, Jr., Attorney for Plaintiffs in Docket 29-G.

Rodney J. Edwards, Attorney for Plaintiffs in Dockets 18-K and 141.

James R. Fitzharris, Attorney for Plaintiffs in Dockets 13-F and 64-A.

Allan Hull, Attorney for Plaintiffs in Docket 133-C.

Robert S. Johnson, Attorney for Plaintiffs in Docket 15-I.

Paul G. Reilly, Attorney for Plaintiffs in Dockets 89 and 341-D.

Louis L. Rochmes, Attorney for Plaintiffs in Dockets 27 and 308.

James E. Clubb, with whom was Mr. Assistant Attorney General Kent Frizzell, Attorneys for Defendant.

Opinion of the Commission

Blue, Commissioner, delivered the opinion of the Commission.

I begin this opinion by reiterating the statement made as a preface to my opinion in the case of *James Strong* v. *United States,* Dockets 13-E, *et al.,* 30 Ind. Cl. Comm. 8 (1973), that while I personally continue to adhere to the view expressed in Chairman Kuykendall's dissenting opinion in the case of *Citizen Band* v. *United States,* Dockets 71, *et al.,* 27 Ind. Cl. Comm. 187, 328 (1972), that the Potawatomis did not constitute one political entity during the period 1795 to 1833, certain conclusions I have reached in the opinion and findings of fact which follow reflect the position of the majority of the Commission with respect to the political structure of the Potawatomi Indians during this period, as has been determined in the *Citizen Band* case, *supra.*

This consolidated proceeding involves claims of recognized title by the various plaintiffs to the areas identified

as Areas 87 and 88 on Royce's Maps of Ohio, Indiana and Michigan 1 in Part II of the 18th Annual Report of the Bureau of American Ethnology, 1896-1897. Representatives of several tribes and bands of Indians relinquished their interests in these areas at the Treaty of September 29, 1817, 7 Stat. 160, proclaimed January 4, 1819.

The dockets captioned above were consolidated by the Commission's order of November 4, 1960, to try the issue of title to these areas. After the consolidation, one hearing was held during which evidence was presented with respect to these consolidated dockets and with respect to two other sets of consolidated dockets, Dockets 13-E, *et al.*, involving claims of title to Royce Areas 53 and 54, Ohio, which were ceded at the Treaty of July 4, 1805, 7 Stat. 87, and Dockets 59, *et al.*, involving claims of title to Royce Area 66, Michigan and Ohio, ceded at the Treaty of November 17, 1807, 7 Stat. 105. The parties have stipulated that any of the evidence in the single hearing might be used and would be applicable to any or all of the three sets of consolidated claims.

At the 1795 Greeneville Treaty, the United States and representatives of several Indian tribes and bands agreed to the establishment of a boundary line between the lands of the Indians and the lands of the United States. The Greeneville Treaty Line began at a point where Cleveland, Ohio, is now located, ran south about 70 miles, then almost due west across central Ohio to a point midway on the Ohio-Indiana border near Fort Recovery, and then south-southwest in Indiana to the Ohio River.

In Article IV of the 1795 Greeneville Treaty, the United States relinquished, with certain enclaves excepted, its claims to all the Indian lands west and north of the Greeneville Treaty Line and, in Article V, conferred upon the Indians participating at the treaty the right permanently to occupy the lands on the Indian side of the Greeneville Treaty Line. Among the enclaves described in Article III of the treaty, which the United States excepted from its relinquishment, were the following:

Subsection in Article III	*Royce Area*
(2.)	13 Ohio
(3.)	14 Ohio
(4.)	15 Ohio
(8.)	18 Ohio
(9.)	19 Ohio
(11.)	20 Ohio

The 1795 Greeneville Treaty did not, however, establish boundaries among the Indians within their lands.

Among those Indians signing the 1795 Greeneville Treaty were representatives of the Wyandot, Delaware, Shawnee and Potawatomi Tribes and representatives of those bands of Ottawa and Chippewa Indians known, respectively, as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, and the Chippewas of the Saginaw. *See Citizen Band* v. *United States,* Dockets 71, *et al.,* 27 Ind. Cl. Comm. 187, 323 (1972); *Saginaw Chippewa Indian Tribe* v. *United States,* Dockets 57, *et al.,* 22 Ind. Cl. Comm. 504, 522 (1970), *Ottawa Tribe* v. *United*

States, Dockets 40-B, *et al.*, 2 Ind. Cl. Comm. 461, 466 (1953).

At the Treaty of Brownstown, November 25, 1808, 7 Stat. 112, representatives of the Chippewas, Ottawas, Potawatomis, Wyandots and Shawnees ceded to the United States a 120 feet wide strip for a roadway—along with a one mile wide strip on each side of the roadway—from the rapids of the Maumme River on the northwestern border of Royce Area 87, across Royce Area 87 to the eastern boundary thereof. There also was ceded a roadway 120 feet wide from Lower Sandusky (present-day Fremont, Ohio) south to the Greeneville Treaty Line.

Royce Areas 87 and 88 are located in northwestern Ohio with small projections into northeastern Indiana and south-central Michigan. These areas were ceded at the Treaty of September 29, 1817, 7 Stat. 160, between the United States and representatives of the "Wyandot, Seneca, Delaware, Shawanese, Potawatomees, Ottawas, and Chippeway, tribes of Indians." In Article 1 of the treaty, the Wyandot Tribe ceded the territory comprising Royce Area 87 to the United States. In Article 2, the "Potawatomy, Ottawas, and Chippeway, tribes of Indians" ceded the territory comprising Royce Area 88 to the United States. In Article 3, the "Wyandot, Seneca, Delaware, Shawnese, Potawatomy, Ottawas, and Chippeway tribes" acceded to the cessions described in Articles 1 and 2. Article 4 provided the following consideration to the signatory Indians: a perpetual annuity of $4,000.00 to the Wyandots; a perpetual annuity of $500.00 to the Senecas; a perpetual annuity of $2,000.00 to the Shawnees; $1,300.00 per year for 15 years to the Potawatomis; $1,000.00 per year for 15 years to the Ottawas;

$1,000.00 per year for 15 years to the Chippewas; and a single payment of $500.00 to the Delawares. The United States also granted several tracts and set aside certain reservations for the signatory Indians.

The Supplementary Treaty of September 17, 1818, 7 Stat. 178, was negotiated with representatives of the Wyandots, Senecas, Shawnees, and Ottawas because the Indians sought to have additional lands set aside for their use and also because the United States Senate refused to ratify the Treaty of September 29, 1817, since it permitted free alienation by the Indians of the tracts granted to them. By the terms of the supplementary treaty, the Wyandots, Senecas and Shawnees received additional lands as reservations, and the grants under the first treaty were changed to reservations, alienation of which would be subject to approval by the United States. In addition, the Wyandots, Shawnees, Senecas and Ottawas were accorded additional monetary consideration. Both the treaties became effective upon proclamation thereof by President Monroe on January 4, 1819.

The Treaty of September 29, 1817, was signed by representatives of the Potawatomi, Wyandot, Shawnee and Delaware Tribes. Those Ottawa Indians who signed the treaty were the Ottawa bands of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf. *See Ottawa Tribe* v. *United States, supra.* All of the above were parties to the 1795 Greeneville Treaty. Furthermore, the references in the text of the Treaty of September 29, 1817, to the 1795 Greeneville Treaty lead to the conclusion that the United States representatives knew they were dealing with the same Indian

parties at the two treaties. Therefore, we believe that the Chippewas of the Saginaw, who were present at the 1795 Greeneville Treaty, were the Chippewa Indians who signed the Treaty of September 29, 1817.

The legal consequences of the 1795 Greeneville Treaty have long been settled. In the case of *Peoria Tribe* v. *United States,* Docket 289, 19 Ind. Cl. Comm. 107, 120-22 (1968), the Commission described these consequences in the following terms:

> * * * Under Article III of the Greenville Treaty * * * a common boundary was strategically negotiated. To give the new line real meaning the Indians relinquished all tribal claims to those lands situated generally east and south of the Greenville line, while the United States, with [a] few exceptions * * *, relinquished all claims they might have to the Indian tribal lands situated west and north of the 1795 Greenville line.
>
> By this relinquishment the United States guaranteed to the Indian tribes negotiating the 1795 Greenville Treaty, more than mere temporary or permissive use and possession of the lands upon which they then were living. As the Commission concluded on a prior occasion, this "relinquishment" was indeed recognition by the United States that permanent ownership of these lands shall be in the occupying tribes. Thus these Indians were accorded legal rights to their homelands, the deprivation of which through governmental action would command just compensation. * * *
>
> * * * The integral follow-up treaties, that is, the post 1795 treaties of cession negotiated with the Greenville Treaty Indians, not only defined with particularity the intertribal boundaries, but also confirmed the previously recognized title. * * *

In the case of *Sac and Fox Tribe* v. *United States*, 161 Ct. Cl. 189 (1963), *cert. denied*, 375 U.S. 921 (1963) (*aff'g* Docket 83, 7 Ind. Cl. Comm. 675 (1959)) the Court of Claims held that only tribes signatory to the 1795 Greeneville Treaty were accorded rights thereunder.

Upon the basis of the above, we have concluded that those tribes and bands of Indians who participated at the 1795 Greeneville Treaty and who were then using and occupying Royce Areas 87 and 88 were, by virtue of said treaty, together with the "follow-up"[1] treaty of September 29, 1817, granted recognized title to these areas. By executing and ratifying the Treaty of September 29, 1817, the United States determined and confirmed the boundaries and ownership of the lands relinquished to said Indians under the 1795 Greeneville Treaty. Thus it follows that those tribes and bands of Indians which had participated at the 1795 Greeneville Treaty and which were then using and occupying Royce Areas 87 and 88 held rights of recognized title to lands within these areas as of January 4, 1819, the effective date of the Treaty of September 29, 1817. These tribes and bands were the Delaware, Wyandot, Potawatomi and Shawnee Tribes, and those bands of Ottawa and Chippewa Indians known, respectively, as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, and the Chippewas of the Saginaw. The Mingoes (or Senecas) were not signatories to the 1795 Greeneville Treaty and derived no benefits therefrom.[2] Furthermore, nonexclusive

1. *See Sac and Fox Tribe* v. *United States, supra*, at 194.

2. The Indian identified in the 1795 Greeneville Treaty as "Reyntueco, (of the Six Nations, living at Sandusky,)" signed the treaty as a representative of the Delawares. This fact is omitted from the argument of the plaintiff Seneca-Cayuga Tribe asserting Mingo (or Seneca) representation at Greeneville.

use and occupancy of portions of Royce Area 87 prior to 1819 by the Mingoes forecloses any claim based upon aboriginal ownership of any portions of Royce Area 87. That Mingo use and occupancy of portions of Royce Area 87 was nonexclusive is established by the evidence herein, and admitted by the plaintiff Seneca-Cayuga Tribe. The claims of the Red Lake Band, *et al.*, in Docket 18-K, and the Six Nations, *et al.*, in Docket 89, are not supported by any evidence.

There remains the question of the division of recognized title interests in Royce Areas 87 and 88. In our recent decision in the case of *James Strong* v. *United States, supra,* 18 *et seq.*, we described the criteria to be used in making a determination such as this and the difficulties involved in such a process. We indicated that the treaty language, including the division of consideration, should first be analyzed to determine whether it contains an indication of the relative interests in the lands among the Indians. In that case the language of the treaty under consideration did not expressly reveal the proportion of Indian interests but merely indicated apparent interests of the signatory Indians that were not substantially disproportionate. In that case the treaty language was not internally inconsistent, nor did the documentary evidence relating to the treaty contradict the impression, gathered from the treaty language, of equivalent interests among the signatory Indians. We therefore looked to use and occupancy of the ceded areas and found that such use and occupancy also indicated that the signatory Indians shared the ceded tracts in approximately equal proportions. Thus the use and occupancy con-

firmed the treaty language. In the instant case we have followed the same type of analysis but have reached a different result.

We begin with the language of the 1817 treaty. In Article 1 of the treaty it was stated that the Wyandots ceded the territory comprising Royce Area 87 to the United States. Article 2 provided that the Ottawas, Chippewas and Potawatomis jointly ceded Royce Area 88 to the United States. In Article 3 all of the signatory Indian tribes and groups acceded to the cessions described in Articles 1 and 2. Article 4 provided monetary consideration for the cessions which varied substantially among the Indians. The Wyandots received the largest share—a perpetual annuity of $4,000.00. At the other extreme, the Delawares received a single payment of $500.00. The Senecas, Shawnees, Potawatomis, Ottawas and Chippewas received annuities of various amounts between the extremes.

In Articles 5, 6, 19 and 20, the United States granted to or reserved for several of the signatory tribes and groups, certain tracts located within the boundaries of Royce Area 87. Two tracts, on the Sandusky River surrounding Upper Sandusky (Royce Areas 211 and 259) and near the eastern border of Royce Area 87 (Royce Area 212), were granted to the Wyandots.[3] Royce Area 163 on lower Sandusky River was granted to the Senecas. Two tracts (Royce Areas 165 and 166) in south-central Royce

3. These and all other grants to the Indians under the 1817 treaty became reservations by virtue of the supplementary treaty the following year. The supplementary treaty also increased the size of several of the tracts and increased the consideration granted. *See* the discussion of the supplementary treaty, *supra,* and finding of fact 7, *infra.*

Area 87 were granted to the Shawnees. Within these tracts was situated the Shawnee village of Wapaghkonetta. A tract (Royce Area 164) near the Shawnee grants was granted jointly to the Shawnees and Senecas residing at Lewistown, a village within said tract. Two tracts (Royce areas 167 and 168) were reserved for the Ottawas—one on the Blanchard River in central Royce Area 87, the other on the AuGlaize River south of Defiance, Ohio. The Ottawas also received a grant (Royce Area 182) at the mouth of the Maumee River. The Delawares were granted a tract (Royce Area 150) on the Sandusky River.

Contemporary Indian interests in Royce Area 87 are also indicated in several other treaty articles. Article 8 set forth several grants within Royce Area 87 to individuals and, in connection with these grants, reference is made to locations of various Indian groups within Royce Area 87. Several of the individuals who were granted lands along the Sandusky River are identified either as being Wyandots or as having lived among the Wyandots. Senecas are mentioned in connection with other grants along and near the Sandusky River, as are Shawnees in connection with grants in south-central Royce Area 87.

Article 9 provided for the appointment of an agent for the Wyandots who was also "to execute the same duties for the Senecas and Delawares on the Sandusky River."

Article 12 provided for the payment of certain sums to the Indians as damages arising from participation on the American side in the War of 1812. It was provided therein that these amounts would be paid during the year 1818 to the Wyandots at Upper Sandusky, to the Senecas both at Lower Sandusky and at Wapaghkonetta, and to the Shawnees and Delawares at Wapaghkonetta.

The Supplementary Treaty of September 17, 1818, set aside an additional reserve (Royce Area 171) for the Wyandots located west of the Sandusky River at the head of the Blanchard River in eastern Royce Area 87.

This analysis of the 1817 treaty leads us to the conclusion that, despite the fact that under Article 1 of the treaty the Wyandots alone ceded Royce Area 87 and under Article 4 the Wyandots received the largest monetary consideration, the Wyandots were not acknowledged by the United States to have held recognized title to all or to a large portion of Royce Area 87. The remainder of the treaty reinforces this conclusion. The numerous treaty references cited above establish that Royce Area 87 was occupied by several different Indian groups and that the United States was aware of this at the time. We find further support for this conclusion in the fact that only ten years before Governor William Hull of Michigan had, in connection with the cession of southeastern Michigan at the Treaty of November 17, 1807, 7 Stat. 105, unsuccessfully sought Ottawa permission for the cession of the lands comprising Royce Area 87. We therefore believe that a division of Indian interests in Royce Area 87 cannot be based upon the language of the treaty itself.

We have reached this same conclusion with respect to the division of consideration under the 1817 treaty. When the 1817 treaty is placed in historical perspective, we are convinced that the division of consideration therein cannot be used to accurately divide the Indian interests. The 1817 treaty was the first treaty following the War of 1812 wherein Ohio lands were ceded to the United States. During the War of 1812, the Ohio and Michigan Indians divided in their

allegiance. The great majority of the Ottawas, Chippewas and Potawatomis joined the British side. Nearly all of the Wyandots, Senecas, Delawares and Shawnees sided with the Americans. The discrepancies in the monetary consideration, particularly that granted the Wyandots as opposed to the amount granted the Ottawas, clearly imply the presence of political factors.

We therefore considered the history of Indian use and occupancy of Royce Area 87 to aid us in determining these interests. We have found that during the last decade of the 18th century and the early years of the 19th century Royce Area 87 was used and occupied by several different Indian groups. The first Indians known to have occupied the Sandusky River region in eastern Royce Area 87 were the Wyandots, who did so around 1750. From that time through the time of the 1817 treaty, there were Wyandots in the Sandusky River region but there were other Indians there at the same time. In the study of Royce Area 87 prepared by defendant's expert witness, Dr. Voegelin, which is Defendant's Exhibit B-402 and which contains the most complete documentation of Indian locations, there are references to twelve different Wyandot locations along the Sandusky River in the years between 1754 and 1819.

Some of these are one-time references to hunting, but several others reveal village sites of long duration at various points along the river and near it. However, during this time, there was an Ottawa village located for many years east of the mouth of Sandusky River. There were also Delawares and Munsees at four different locations along the Sandusky River at various times between 1777 and 1819. Lastly, there are numerous references to Mingoes

and Mohawks hunting and living along the Sandusky River throughout the period.

The evidence reveals that this same kind of mixed use and occupancy was even more pronounced along the Maumee River. Ottawas were located at several places along the middle and lower Maumee River from about 1760 into the early 19th century. However, the evidence also shows that Shawnees, Delawares and Munsees, Wyandots and Miamis freely used and occupied the Maumee River region during the last decade of the 18th century and the early years of the 19th century in close proximity to the Ottawas. This concentration of different Indian groups was at least partially caused by the Indian-American hostilities in western Ohio during the last years of the 18th century but, nonetheless, when the United States, at the 1795 Greeneville Treaty, recognized title in the Indians to these areas there were several Indian groups on the Maumee River using and occupying this region without clear-cut tribal boundaries.

In central and southern portions of Royce Area 87 we find evidence of this same pattern of mixed use and occupancy. Shawnees were congregated in towns in southern Royce Area 87 during the 1790's and early 1800's, but there were Wyandot and Mingo settlements nearby. In central Royce Area 87, there were both Ottawa and Wyandot villages along the Blanchard River in the early 19th century.

With such evidence of mixed use and occupancy during the times the relevant treaties were negotiated, we see no basis for apportioning interests in Royce Area 87 on the basis of geographical division. However, we do believe it is necessary to acknowledge the predominant association of the Wyandots and Ottawas with Royce Area 87. This

can best be accomplished, we believe, by apportioning unequal fractions of an undivided interest in the whole of Royce Area 87. In making this kind of a division we have taken into account such factors as the relative numerical incidence of references to the various Indian groups, the overall period during which these groups used and occupied Royce Area 87, the geographical extent of use and occupancy by these groups, and the historical context of their use and occupancy. We are unable to rely upon Indian population because of the discrepancies in available estimates, the absence of reliable overall figures for Royce Area 87, and the fluctuations in population during the period considered.

The evidence establishes that the Wyandot Indians possessed the most substantial interest in Royce Area 87. The Wyandots were present within Royce Area 87 for the longest time. They were the predominant Indian group in eastern Royce Area 87 and their presence is also established along the Maumee River and in south-central Royce Area 87. The Ottawas possessed the next most significant interest in Royce Area 87. Their primary presence was along the Maumee River but Ottawas were present also in other regions of Royce Area 87. The Delawares and Shawnees came later into Royce Area 87 under pressure from American troops. Their presence within Royce Area 87 during the treaty period is clearly established but the circumstances of their presence warrant our finding that they possessed lesser interests.

Taking all these factors into account, including the treaty language and the division of treaty consideration, we believe that a fair and equitable division of Indian in-

terests in Royce Area 87 consists of apportioning a one-half fractional share in the whole to the Wyandots, a three-tenths fractional share in the whole to the Ottawas, and a one-tenth fractional share in the whole each to the Shawnee and Delawares. We believe this method of apportionment to be consistent with the Court of Claim's reasoning in the case of *United States* v. *Kickapoo Tribe*, 174 Ct. Cl. 550 (1966) (*aff'g* Dockets 317, *et al.*, 10 Ind. Cl. Comm. 279 (1962)).

With respect to Royce Area 88, we believe that the language of the 1817 treaty dictates division on the basis of equal undivided shares of the whole. In Article 2 of the treaty the Ottawas, Chippewas and Potawatomis jointly ceded Royce Area 88. Article 4 divided the monetary consideration almost equally among these three groups, and there were no areas within Royce Area 88 granted or reserved to the Indians by the United States.[4] There is very little evidence of Indian use and occupancy of Royce Area 88.

We have therefore concluded that on January 4, 1819, the effective date of the Treaty of September 29, 1817, the Wyandot Tribe, represented here by the plaintiffs in Docket 141, held recognized title to an undivided one-half interest in Royce Area 87, and the bands of Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, represented here by the plaintiffs in Docket 133-C, held recognized title to an undivided three-tenths interest in Royce Area 87, excluding, in each case, those areas within Royce Area 87 which had previously been ceded to the

4. In Article 8 of the 1817 treaty there was, however, one section of land granted to certain "adopted children of the Potawatomy tribe," to be located within Royce Area 88.

United States at the 1795 Greeneville Treaty and at the 1808 Brownstown Treaty. Furthermore, the Delaware Tribe, represented here by the plaintiff in Docket 27, and the Shawnee Tribe, represented here by the plaintiffs in Docket 64-A, each held recognized title to an undivided one-tenth interest in the same area as of the same date.

We have also concluded that on January 4, 1819, the Potawatomi Tribe, represented here by the plaintiffs in Docket 15-I, 29-G and 308, the bands of Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, represented here by the plaintiffs in Docket 133-C, and the bands of Chippewas of the Saginaw, represented here by the plaintiffs in Docket 13-F, each held recognized title to an undivided one-third interest in Royce Area 88.

This case may now proceed to a determination of the acreage of the ceded lands, the fair market value thereof as of January 4, 1819, the consideration given for the cessions, and all other matters bearing upon the question of defendant's liability to the separate plaintiffs.

BRANTLEY BLUE

Brantley Blue, Commissioner

We concur:

JOHN T. VANCE

John T. Vance, Commissioner

RICHARD W. YARBOROUGH

Richard W. Yarborough, Commissioner

MARGARET M. PIERCE

Margaret M. Pierce, Commissioner

Kuykendall, Chairman, concurring.

The political structure of the Potawatomi Indians dur-the treaty period was considered by the Commision in *Citizen Band of Potawatomi Indians* v. *United States*, Dockets 71, *et al.*, 27 Ind. Cl. Comm. 187 (1972). In my opinion there was no Potawatomi Tribe or Nation during the material period. My view that the Potawatomi "tribe" was composed of politically autonomous landowning bands, is set forth in the dissent in that case. *Id.* at 328-471. However, since the majority found that any ultimate award to the Potawatomi plaintiffs herein should be on behalf of the Potawatomi Tribe or Nation, I recognize that I am now bound thereby and, accordingly, I concur.

JEROME K. KUYKENDALL

Jerome K. Kuykendall, Chairman

BEFORE THE

INDIAN CLAIMS COMMISSION

Docket No. 13-F

JAMES STRONG, *et al.*, as the representatives and on behalf of all members by blood of the CHIPPEWA TRIBE OF INDIANS,

Docket No. 15-I

THE POTTAWATOMIE TRIBE OF INDIANS, THE PRAIRIE BAND OF THE POTTAWATOMIE TRIBE OF INDIANS, *et al.*,

Docket No. 18-K

RED LAKE BAND, *et al.*,

Docket No. 27

THE DELAWARE TRIBE OF INDIANS,

Docket No. 29-G

HANNAHVILLE INDIAN COMMUNITY, *et al.*,

Docket No. 64-A

SHAWNEE TRIBE OF INDIANS OF OKLAHOMA, *et al.*,

Docket No. 89

THE SIX NATIONS, *et al.*,

Docket No. 133-C

THE OTTAWA TRIBE, and GUY JENNISON, *et al.*,
as representatives of THE OTTAWA TRIBE,

Opinion, Findings and Order of Indian Claims Commission

Docket No. 141

LAWRENCE ZANE, *et al., ex rel.*, WYANDOT TRIBE, *et al.*,

Docket No. 308

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, *et al.*,

Docket No. 341-D

THE SENECA-CAYUGA TRIBE OF OKLAHOMA, and PETER BUCK, *et al.*, members and representatives of members thereof,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

Decided: May 23, 1973

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. *Parties.* Each of the tribal plaintiffs herein has the right and capacity under section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050) to bring and maintain these actions before the Indian Claims Commission on behalf of their respective predecessors.

The claims of the plaintiffs in Docket 18-K, the Red Lake Band, *et al.*, and in Docket 89, The Six Nations, *et al.*, are not supported by any evidence. Accordingly, we find these plaintiffs have no interests in the matters at issue here.

2. *The 1795 Treaty of Greeneville.* The Treaty of Greeneville, August 3, 1795, 7 Stat. 49, between the United States and representatives of several tribes and bands of Indians established a general boundary line between the lands of the United States and the lands of the signatory Indians. This boundary, which is generally referred to as the Greeneville Treaty Line, began at a point where Cleveland, Ohio, is now located, ran south about 70 miles, then almost due west across central Ohio to a point midway on the Ohio-Indiana border near Fort Recovery, and then south-southwest in Indiana to the Ohio River.

Under Article III of the 1795 Greeneville Treaty the signatory Indians ceded and relinquished all claims to lands east and south of the Greeneville Treaty Line, and in consideration of these cessions the United States, under Article IV of the treaty, relinquished (with certain areas excepted) claims to all the Indian lands situated west and north of the Greeneville Treaty Line.

Among the excepted areas were the following, which are described in the second paragraph of Article III of the 1795 Greeneville Treaty:

> * * * (2.) One piece two miles square at the head of the navigable water or landing on the St. Mary's river, near Girty's town. (3.) One piece six miles square at the head of the navigable water of the Au-Glaize river. (4.) One piece six miles square at the confluence of the Au-Glaize and Miami rivers, where Fort Defiance now stands. * * * (8.) One piece twelve miles square at the British fort on the Miami of the lake at the foot of the rapids. (9.) One piece six miles square at the mouth of the said river where it empties

into the Lake * * * (11.) One piece two miles square at the lower rapids of Sandusky river. [7 Stat. at 50.][1]

Article V of the 1795 Greeneville Treaty defined the meaning of the United States' relinquishment of the lands north and west of the Greeneville Treaty Line as follows:

> To prevent any misunderstanding about the Indian lands relinquished by the United States in the fourth article, it is now explicitly declared, that the meaning of that relinquishment is this: the Indian tribes who have a right to those lands, are quietly to enjoy them, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States; but when those tribes, or any of them, shall be disposed to sell their lands, or any part of them, they are to be sold only to the United States; and until such sale the United States will protect all the said Indian tribes in the quiet enjoyment of their lands against all citizens of the United States, and against all other white persons who intrude upon the same. And the said Indian tribes again acknowledge themselves to be under the protection of the said United States and no other power whatever. [7 Stat. at 52.]

Insofar as pertinent to this proceeding, representatives of the Wyandot, Delaware, Shawnee and Potawatomi

1. These areas are identified as follows on Royce's Map of Ohio:

Subsection in Article III	*Royce Area*	*Approximate Acreage*
(2.)	13 Ohio	2,500
(3.)	14 Ohio	23,040
(4.)	15 Ohio	23,040
(8.)	18 Ohio	92,160
(9.)	19 Ohio	23,040
(11.)	20 Ohio	2,560

Tribes signed the 1795 Greeneville Treaty. Representatives of those bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf also signed the treaty, as did those bands of Chippewa Indians known as Chippewas of the Saginaw. Among those who signed with the Delawares was one Indian referred to as "of the Six Nations, living at Sandusky."

Under the 1795 Greeneville Treaty, the United States relinquished its claims to the Indian lands within a defined area. That relinquishment was intended to confer on the Indian participants using and occupying that area the right permanently to occupy the lands on the Indian side of the Greeneville Treaty Line without interference. The 1795 Greeneville Treaty therefore granted general recognition of the title of those Indian tribes and bands which were parties to the treaty to the lands being used and occupied by them on the Indian side of the Greeneville Treaty Line. While the 1795 Treaty of Greeneville did not fix boundaries between the tribes, the United States intended and led the tribal representatives to believe that such boundaries would be established through future negotiations. These boundaries were subsequently defined in several "follow-up" treaties[2] with those Indians signatory to the 1795 Greeneville Treaty, including the Treaty of September 29, 1817, 7 Stat. 160.

3. *The Treaty of November 25, 1808.* As early as 1807, the United States attempted to acquire the Indian rights to the territory comprising Royce Area 87. In January 1807 Governor William Hull of Michigan was commissioned

2. *See Sac and Fox Tribe* v. *United States,* 161 Ct. Cl. 189, 194 (1963), *cert. denied,* 375 U. S. 921 (1963).

to treat with the interested tribes for the cession of a substantial portion of Royce Area 87. However, at the Treaty of Detroit, November 17, 1807, 7 Stat. 105, the Ottawas opposed the sale of lands south of the Maumee River and Hull was therefore unable to obtain such a cession in 1807.

However, the next year at the Treaty of Brownstown, November 25, 1808, 7 Stat. 112, representatives of the Chippewas, Ottawas, Potawatomis, Wyandots and Shawnees did agree to cede to the United States a 120 feet wide strip for a roadway—along with a one mile wide strip on each side of the roadway—from the rapids of the Maumee River on the northwestern border of Royce Area 87, across Royce Area 87 to the eastern boundary thereof. There was also ceded a roadway 120 feet wide from Lower Sandusky (present-day Fremont, Ohio) south to the Greeneville Treaty Line.

4. *Indian Participation in the War of 1812.* Indian loyalties were divided during the War of 1812. The great majority of Ottawas, Chippewas and Potawatomis sided with the British while nearly all of the Wyandots, Senecas, Delawares and Shawnees remained loyal to the Americans. At the Treaty of Spring Wells, September 8, 1815, 7 Stat. 131, the United States made peace with the Ottawas, Chippewas and Potawatomis and, in consideration of the ". . . fidelity to the United States which has been manifested by the Wyandot, Delaware, Seneca, and Shawanoe, tribes, throughout the late war," pardoned those few members of the latter tribes who had joined the British side.

5. *Royce Areas 87 and 88.* Royce Area 87 is located in northwestern Ohio, with a small triangular extension into northeastern Indiana as far west as Fort Wayne. This area is bounded on the northeast by Lake Erie, on the east by the western boundary of Royce Areas 53 and 54 (ceded at the Treaty of Fort Industry, July 4, 1805, 7 Stat. 87), on the south by the Greeneville Treaty Line, on the southwest by the St. Mary's River, and on the northwest by the Maumee River. Royce Area 88 is a rectangular tract located in northwestern Ohio and south-central Michigan. The southern boundary of Royce Area 88 is the Maumee River, thus making Royce Areas 87 and 88 contiguous.

The territory comprising Royce Areas 87 and 88, excluding those enclaves within Royce Area 87 which were ceded to the United States at the 1795 Greeneville Treaty, was included within the lands which the United States relinquished to the Indians under the terms of the 1795 Greeneville Treaty. Therefore, this territory was a part of the lands in which the United States at said treaty, together with the "follow-up" treaties, recognized the title of the signatory Indian tribes and bands which were using and occupying those lands.

6. *The Treaty of September 29, 1817.* The Treaty of September 29, 1817, 7 Stat. 160, was concluded between the United States, represented by Lewis Cass and Duncan McArthur, and "the sachems, chiefs, and warriors, of the Wyandot, Seneca, Delaware, Shawanese, Potawatomees, Ottawas, and Chippeway, tribes of Indians." Under Article 1 of the treaty, the Wyandot Tribe ceded to the United

States the territory comprising Royce Area 87. In Article 2, the "Potawatomy, Ottawas, and Chippeway, tribes of Indians" ceded to the United States the territory comprising Royce Area 88. In Article 3, the "Wyandot, Seneca, Delaware, Shawnese, Potawatomy, Ottawas, and Chippeway tribes" acceded to the cessions described in Articles 1 and 2. Article 4 provided the following consideration to the signatory tribes and bands: a perpetual annuity of $4,000.00 to the Wyandots; a perpetual annuity of $500.00 to the Senecas; a perpetual annuity of $2,000.00 to the Shawnees; $1,300.00 per year for 15 years to the Potawatomis; $1,000.00 per year for 15 years to the Ottawas; $1,000.00 per year for 15 years to the Chippewas; and a single payment of $500.00 to the Delawares.

In Articles 5 and 6 of the treaty, the United States granted several tracts within Royce Area 87 to the Wyandots, Shawnees and Senecas for the use of numerous individual Indians named in a schedule annexed to the treaty. These grants consisted of Royce Areas 211, 212 and 259 to the Wyandots; Royce Areas 165 and 166 to the Shawnees; Royce Area 163 to the Senecas; and Royce Area 164 jointly to the Shawnees and Senecas. In the same Article there were two reserves (Royce Areas 167 and 168) set aside for the use of the Ottawas. Article 8 contained a series of fee simple grants to individual whites and Indians.

Article 9 provided for the appointment of an agent for the Wyandots, Senecas and Delawares in the Sandusky River region. Article 12 provided for the payment of certain amounts to the Wyandots, Senecas, Shawnees and

Delawares as damages arising from participation on the American side during the War of 1812.

Article 19 contained a grant to the Delaware Indians (Royce Area 150) for the use of persons named in the schedule annexed to the treaty. Article 20 contained a grant by patent to the chiefs of the Ottawa Tribe for the use of the tribe with the proviso that the tract granted would be held by the tribe "upon the usual conditions of Indian reservations, as though no patent were issued." Article 21 provided that the treaty would become effective as soon as the same shall have been ratified by the President of the United States, by and with the advice and consent of the Senate thereof."

Representatives of the Potawatomi, Wyandot, Delaware and Shawnee tribes signed the treaty, as did representatives of those bands of Ottawas and Chippewas known, respectively, as the Ottawas of the Maumee, Blanchard's Fork, Auglaize and Roche de Boeuf, and the Chippewas of the Saginaw. The treaty was also signed by a group of Seneca Indians (Mingoes) who resided within Royce Area 87.

The treaty was proclaimed by President Monroe on January 4, 1819, on which date it became effective. The effect of the 1817 treaty was to confirm the general recognition of title granted at the 1795 Greeneville Treaty to those tribes and bands signatory to the latter treaty who were using and occupying Royce Areas 87 and 88.

7. *The Supplementary Treaty of September 17, 1818.* Neither the United States nor the Indians were satisfied

with the 1817 Treaty. The Indians wanted additional lands set aside for them. The United States Congress wanted the fee simple provisions contained in the grants to the Wyandots, Shawnees, Delawares and Senecas changed to the usual provision for Indian reservations, restricting alienation to sale with the approval of the United States, and the grant to the Ottawas under Article 20 of the 1817 Treaty changed in the same manner. By the supplementary treaty of September 17, 1818, 7 Stat. 178, between the United States and representatives of the "Wyandot, Seneca, Shawnees, and Ottawas, tribes of Indians" these ends were achieved. Under Article 1 of the supplementary treaty, it was agreed that all areas granted in fee under the 1817 Treaty "shall not be thus granted, but shall be excepted from the cession made by the said tribes to the United States, reserved for the use of the said Indians, and held by them in the same manner as Indian reservations have been heretofore held."

Under Article 2, the boundaries of Royce Areas 211 and 259 were expanded as additional territory for the use of the Wyandots, and Royce Areas 171 and 213 were also reserved for the use of the Wyandots. The boundaries of Royce Areas 165 and 164 were expanded as additional territory respectively, for the use of the Shawnees, and of the Shawnees and Senecas, jointly. In addition, Royce Area 213 was expanded as additional territory for the use of the Senecas.

Under Article 4 the Wyandots were granted a perpetual annuity of $500.00 in addition to the annuity granted them under the 1817 Treaty; the Shawnees and Senecas residing

together at Lewistown were granted an "additional" perpetual annuity of $1,000.00;[3] the Senecas were granted an additional perpetual annuity of $500.00; and the Ottawas were granted an additional perpetual annuity of $1,500.00.

The supplementary treaty was proclaimed on January 4, 1819, together with the Treaty of September 29, 1817.

8. *Use and Occupancy of Royce Areas 87 and 88.* During the treaty period (from 1795 to 1817) and for several years prior thereto, Royce Area 87 was used and occupied by several different Indian groups. Wyandot use and occupancy of the Sandusky River region in eastern Royce Area 87 had commenced before 1750 and continued, except for one brief hiatus in the mid-18th century, until after the treaty period. Ottawa use and occupancy of the lower Maumee River region in northwestern Royce Area 87 began at least as early as 1763 and continued without interruption until after the treaty period. However, during the fifteen year period immediately preceding the 1795 Greeneville Treaty, several other Indian groups used and occupied the regions on the Sandusky and lower Maumee Rivers. For at least a part of the period between the 1795 Greeneville Treaty and the 1817 Treaty, these same groups continued to use and occupy these regions. In addition, use and occupancy of the remaining, greater portions of Royce Area 87 was mixed during the treaty period.

This influx of different Indian groups into Royce Area 87 prior to the 1795 Greeneville Treaty was precipitated by the American Revolution and by the subsequent Indian

3. The 1817 Treaty did not recite the payment of an annuity jointly to the Shawnees and Senecas residing at Lewistown.

wars in Ohio. The Indian wars culminated in 1794 with the Battle of Fallen Timbers, when General Anthony Wayne finally defeated the combined Indian tribes and bands.

During the American Revolution, American forces attacked the settlements within Royce Area 11, in Ohio, of those Indians who had sided with the British. As a result these Indians were forced to flee to the north and west, and many of them moved into Royce Area 87 in the early 1780's. Delaware Indians from the Muskingum River region of Royce Area 11 and groups of Mingoes settled along the Sandusky River. At about the same time the Shawnees, who were forced from the Scioto and the Great and Little Miami River regions of Royce Area 11, fled north into Royce Area 87 and west into Indiana. In the years following the American Revolution, various Indians came together within western Royce Area 87 incident to the continuing warfare against the Americans.

The study perpared by defendant's expert witness, Dr. Voeglin, which is Defendant's Exhibit B-402, lists 21 Wyandot sites within Royce Area 87 between the years 1754 and 1819, with 12 of these sites being on or near the Sandusky River. There are also listed 24 Ottawa locations within Royce Area 87 between 1757 and 1819, half of them along the Maumee River. But there are a greater number of references to Indians other than the Ottawas and Wyandots in these areas, particularly to Shawnees, Delawares, Munsees and Mingoes after 1780. In central and southern Royce Area 87 there are substantially fewer references to Indian sites, but those listed show that several of these Indian groups had sites there after 1780 in close proximity

to one another. The relative number of sites in central and southern Royce Area 87 do not indicate that any one group was predominant there.

For several years before the 1795 Greeneville Treaty and throughout the treaty period no extensive portion of Royce Area 87 was used and occupied by any one tribe or band of Indians to the exclusion of others. The record herein establishes that the Wyandots and Ottawas were the two predominant Indian groups within Royce Area 87 during the period under consideration, both because of their long-time use and occupancy of portions thereof, and because they used and occupied Royce Area 87 more extensively than did other Indians during the period of mixed use and occupancy, which began about 1780 and continued throughout the treaty period. The Delawares and Shawnees came into Royce Area 87 at a later date, and their use and occupancy of this area was more limited than that of the Wyandots and Ottawas.

There is very little evidence of Indian use and occupancy of Royce Area 88 during the entire period under consideration. We know that Ottawas used and occupied the southern portion of Royce Area 88 along the Maumee River. There are a few contemporary statements reporting Potawatomi, Chippewa and Ottawa use and occupancy of Royce Area 88 north of the Maumee region.

Conclusions of Law

1. The claims to Royce Areas 87 and 88 in the petitions of The Red Lake Band, *et al.*, in Docket 18-K, and The Six Nations, *et al.*, in Docket 89, are not supported by any evi-

dence. Therefore, the claims in Docket 18-K should be dismissed and the claims in Docket 89 severed from any further part in these consolidated proceedings.

2. The predecessors of The Seneca-Cayuga Tribe of Oklahoma, *et al.*, plaintiffs in Docket 341-D, were not signatories to the 1795 Greeneville Treaty and acquired no rights thereunder. Furthermore, these Indians did not possess aboriginal title to any portion of Royce Area 87 as of January 4, 1819. Therefore the claims in Docket 341-D should be dismissed.

3. As of January 4, 1819, the effective date of the Treaty of September 29, 1817, recognized title to all of Royce Area 87, except those areas (delineated in finding of fact No. 2, *supra*) ceded to the United States at the 1795 Greeneville Treaty and those areas (delineated in finding of fact No. 3, *supra*) ceded to the United States at the 1808 Brownstown Treaty, was held by the Indian entities enumerated below in the following portions:

(A) An undivided one-half interest, by the Wyandot Tribe, represented in these proceedings by the plaintiffs in Docket 141;

(B) An undivided three-tenths interest, by the bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, represented in these proceedings by the plaintiffs in Docket 133-C;

(C) An undivided one-tenth interest, by the Delaware Tribe, represented in these proceedings by the plaintiff in Docket 27; and

(D) An undivided one-tenth interest, by the Shawnee Tribe, represented in these proceedings by the plaintiffs in Docket 64-A.

4. As of January 4, 1819, the effective date of the Treaty of September 29, 1817, the band of Chippewa Indians known as the Chippewas of the Saginaw, represented in these proceedings by the plaintiffs in Docket 13-F; the bands of Ottawa Indians known as the Ottawas of the Maumee, Blanchard's Fork, AuGlaize and Roche de Boeuf, represented in these proceedings by the plaintiffs in Docket 133-C; and the Potawatomi Tribe, represented in these proceedings by the plaintiffs in Dockets 15-I, 29-G and 308, each held recognized title to an undivided one-third interest in Royce Area 88.

JEROME K. KUYKENDALL

Jerome K. Kuykendall, Chairman

JOHN T. VANCE

John T. Vance, Commissioner

RICHARD W. YARBOROUGH

Richard W. Yarborough, Commissioner

MARGARET H. PIERCE

Margaret H. Pierce, Commissioner

BRANTLEY BLUE

Brantley Blue, Commissioner

Opinion, Findings and Order of Indian Claims Commission

BEFORE THE

INDIAN CLAIMS COMMISSION

Docket No. 13-F

JAMES STRONG, *et al.*, as the representatives and on behalf of all members by blood of the CHIPPEWA TRIBE OF INDIANS,

Docket No. 15-I

THE POTTAWATOMIE TRIBE OF INDIANS, THE PRAIRIE BAND OF THE POTTAWATOMIE TRIBE OF INDIANS, *et al.*,

Docket No. 18-K

RED LAKE BAND, *et al.*,

Docket No. 27

THE DELAWARE TRIBE OF INDIANS,

Docket No. 29-G

HANNAHVILLE INDIAN COMMUNITY, *et al.*,

Docket No. 64-A

SHAWNEE TRIBE OF INDIANS OF OKLAHOMA, *et al.*,

Docket No. 89

THE SIX NATIONS, *et al.*,

Docket No. 133-C

THE OTTAWA TRIBE, and GUY JENNISON, *et al.*,
as representatives of THE OTTAWA TRIBE,

Opinion, Findings and Order of Indian Claims Commission

Docket No. 141

LAWRENCE ZANE, *et al., ex rel.*, WYANDOT TRIBE, *et al.*,

Docket No. 308

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, *et al.*,

Docket No. 341-D

THE SENECA-CAYUGA TRIBE OF OKLAHOMA, and PETER BUCK, *et al.*, members and representatives of members thereof,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

Final Order Dismissing the Claims in Docket 18-K and 341-D and Severing Docket 89, and Interlocutory Order in Dockets 13-F, 15-I, 27, 29-G, 64-A, 133-C, 141 and 308

Upon the findings of fact, conclusions of law and opinion this day filed herein and which are hereby made a part of this order,

IT IS HEREBY ORDERED that the claims in Docket 18-K and 341-D be, and the same are hereby, dismissed;

IT IS FURTHER ORDERED that Docket 89 be, and the same is hereby, severed from the consolidated proceedings herein; and

IT IS FURTHER ORDERED that the claims in Dockets 13-F, 15-I, 27, 29-G, 64-A, 133-C, 141 and 308, proceed for the purpose of determining the acreage and fair market value, as of January 4, 1819, the effective date of the Treaty of September 29, 1817, of the lands ceded at said treaty, the consideration given for the cessions, and all other matters bearing upon the question of defendant's liability to the separate plaintiffs.

Dated at Washington, D. C., this 23d day of May, 1973.

JEROME K. KUYKENDALL

Jerome K. Kuykendall, Chairman

JOHN T. VANCE

John T. Vance, Commissioner

RICHARD W. YARBOROUGH

Richard W. Yarborough, Commissioner

MARGARET H. PIERCE

Margaret H. Pierce, Commissioner

BRANTLEY BLUE

Brantley Blue, Commissioner

Appendix C

Opinion of Indian Claims Commission Denying Motion for Rehearing. 31 Ind. Cl. Comm. 359

BEFORE THE

INDIAN CLAIMS COMMISSION

Docket No. 13-E

JAMES STRONG, *et al.*, as the representatives and on behalf of all members by blood of the CHIPPEWA TRIBE OF INDIANS,

Docket No. 18-L

RED LAKE BAND, *et al.*,

Docket No. 27-E

THE DELAWARE TRIBE OF INDIANS,

Docket No. 29-D

HANNAHVILLE INDIAN COMMUNITY, *et al.*,

Docket No. 89

THE SIX NATIONS, *et al.*,

Docket No. 133-A

THE OTTAWA TRIBE, and GUY JENNISON, *et al.*, as representatives of THE OTTAWA TRIBE,

Docket No. 139

LAWRENCE ZANE, *et al., ex rel.*, WYANDOT TRIBE, *et al.*,

Opinion of Indian Claims Commission Denying Motion

Docket No. 202

ABSENTEE DELAWARE TRIBE OF OKLAHOMA, DELAWARE NATION, *ex rel.*, W. E. EXENDINE and MYRTLE HOLDER,

Docket No. 302

THE OTTAWA TRIBE, and GUY JENNISON, *et al.*, as representatives of THE OTTAWA TRIBE,

Docket No. 341-C

THE SENECA-CAYUGA TRIBE OF OKLAHOMA, and PETER BUCK, *et al.*, members and representatives of members thereof,
Plaintiffs,

Docket No. 29-D

POTAWATOMI INDIANS OF INDIANA AND MICHIGAN, INC.,
Intervenor,

Docket No. 13-F

JAMES STRONG, *et al.*, as the representatives and on behalf of all members by blood of the CHIPPEWA TRIBE OF INDIANS,

Docket No. 15-I

THE POTTAWATOMIE TRIBE OF INDIANS, THE PRAIRIE BAND OF THE POTTAWATOMIE TRIBE OF INDIANS, *et al.*,

Docket No. 18-K

RED LAKE BAND, *et al.*,

Docket No. 27

THE DELAWARE TRIBE OF INDIANS,

Opinion of Indian Claims Commission Denying Motion

Docket No. 29-G

HANNAHVILLE INDIAN COMMUNITY, *et al.*,

Docket No. 64-A

SHAWNEE TRIBE OF INDIANS OF OKLAHOMA, *et al.*,

Docket No. 89

THE SIX NATIONS, *et al.*,

Docket No. 133-C

THE OTTAWA TRIBE, and GUY JENNISON, *et al.*,
as representatives of THE OTTAWA TRIBE,

Docket No. 141

LAWRENCE ZANE, *et al., ex rel.*, WYANDOT TRIBE, *et al.*,

Docket No. 308

CITIZEN BAND OF POTAWATOMI INDIANS OF OKLAHOMA, *et al.*,

Docket No. 341-D

THE SENECA-CAYUGA TRIBE OF OKLAHOMA, and PETER BUCK,
et al., members and representatives of members thereof,
Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

Decided: September 19, 1973

Appearances:

Robert C. Bell, Jr., Attorney for Plaintiffs in Docket 29-D and 29-G.

Rodney J. Edwards, Attorney for Plaintiffs in Dockets 18-K, 18-L, 139 and 141.

James R. Fitzharris, Attorney for Plaintiffs in Dockets 13-E, 13-F and 64-A.

Allan Hull, Attorney for Plaintiffs in Dockets 133-A, 133-C and 302.

Robert S. Johnson, Attorney for Plaintiffs in Docket 15-I.

Paul G. Reilly, Attorney for Plaintiffs in Dockets 89, 341-C and 341-D.

Louis L. Rochmes, Attorney for Plaintiffs in Dockets 27, 27-E, 202 and 308.

James M. Upton, with whom was Mr. Assistant Attorney General Wallace H. Johnson, Attorneys for Defendant.

Opinion on Motions for Rehearing in Dockets 341-C and 341-D

Blue, Commissioner, delivered the opinion of the Commission.

On June 19, 1973, the plaintiffs in the above-captioned Dockets 341-C and 341-D, the Seneca-Cuyaga Tribe of Oklahoma, *et al.*, filed the following motions:

1) a motion for rehearing in Docket 341-D of the Commission's order entered in the case consolidated under the above-captioned Docket 13-F on May 23, 1973, at 30 Ind. Cl. Comm. 370-71, dismissing the plaintiffs' claim in said Docket 341-D; and

2) a motion for extension of time to file for rehearing in Docket 341-C of the Commission's order entered in the cases consolidated under the above-captioned Docket 13-E on April 4, 1973, at 30 Ind. Cl. Comm. 37-38, dismissing the plaintiffs' claim in said Docket 341-C.

On July 5, 1973, the Commission entered an order, at 31 Ind. Cl. Comm. 11-12, in the case consolidated under the above-captioned Docket 13-E, denying the plaintiffs' motion under Docket 341-C for an extension of time to file for rehearing on the grounds that, as explained in said order, the motion was procedurally defective and unnecessary. At the same time the Commission ordered that the June 19, 1973, motion under Docket 341-C be deemed to constitute a motion for hearing under Docket 341-C filed as of July 5, 1973, and that the parties would have fifteen days from the date of the entry of the order to file responses to the motion for rehearing as is provided in Rule 33(c) of the Commission's General Rules of Procedure, 25 C.F.R. §503.33(c).

Responses in opposition to the motions for rehearing were filed on July 9, 1973, by the Chippewa plaintiffs in Dockets 13-E and 13-F, the Shawnee plaintiffs in Docket 64-A and the Wyandot plaintiffs in Dockets 139 and 141. The defendant responded in opposition on July 20, 1973.

The Seneca-Cayugas contend in these motions for rehearing that the findings of fact and conclusions of law upon which were based the orders dismissing both Dockets 341-C and 341-D were erroneous insofar as was found that the Indian who signed the Treaty of Greeneville, August 3, 1795, 7 Stat. 49, 54, as "Reyn-tue-co, (of the Six Nations,

living at Sandusky)" signed with and as a representative of the Delawares and insofar as was concluded that the predecessors of the Seneca-Cayuga Tribe of Oklahoma, *et al.*, were not signatories to the 1795 Treaty of Greeneville and acquired no rights thereunder. *See* Dockets 13-E, *et al.*, 30 Ind. Cl. Comm. 8, at 12, 27, 35, and Dockets 13-F, *et al.*, 30 Ind. Cl. Comm. 337, at 345, 359, 368.

The evidence submitted with the motions and relied upon to support the motions consists of a photostatic copy of the original handwritten 1795 Treaty of Greeneville and portions of the minutes of the treaty proceedings. The photostatic copy of the original handwritten treaty has not been introduced as evidence in either Dockets 13-E, *et al.*, consolidated or Dockets 13-F, *et al.*, consolidated, but is in evidence in other cases before the Commission; namely, Dockets 315, *et al.*, consolidated, as defendant's Exhibit No. A-602, and Dockets 13-G, *et al.*, consolidated, as defendant's Exhibit No. 538. Portions of the minutes of the 1795 Greeneville Treaty have been admitted into evidence in Dockets 13-E, *et al.*, consolidated, as defendant's Exhibit No. A-252, and in Dockets 13-F, *et al.*, consolidated, as defendant's Exhibit No. B-221. The complete minutes of the treaty are in evidence in Dockets 13-G, *et al.*, consolidated, as defendant's Exhibit No. 31. By the accompanying order and in connection with its consideration of these motions for rehearing, the Commission has, on its own motion, admitted into evidence in these proceedings the photostatic copy of the handwritten 1795 Greeneville Treaty (Def. Exh. A-602, Dockets 315, *et al.*) and the complete minutes of the

Greeneville Treaty proceedings (Def. Exh. 31, Dockets 13-G, *et al.*).

The Seneca-Cayugas assert that this evidence demonstrates that the plaintiffs' predecessors in interest participated in the 1795 Greeneville Treaty and signed the same in their own right independent of the Delawares.

This contention on motion for rehearing would appear to be at variance with the prior stated position of the Seneca-Cayuga Tribe of Oklahoma, *et al.*, as it was set forth in said plaintiffs' proposed findings of fact, filed herein on March 2, 1970. There, plaintiffs proposed the following finding of fact:

RECOGNITION OF THE INDIAN TITLE

Finding 8

The Greenville Treaty

> All the tribes named in the cession treaties referred to above,* except the Senecas, were also named as parties to the treaty of Greenville concluded August 3, 1795. However the 'Six Nations of Sandusky' were present at the treaty proceedings and 'Reyn-tu-co, of the Six Nations living at Sandusky' signed the treaty. * * * The possession of this territory the United States guaranteed to the participating tribes. * * *

As evidence in support of this proposed finding the plaintiffs cited certain excerpts from the minutes of the proceed-

* These treaties are the treaty of July 4, 1805, 7 Stat. 87, under which Royce Areas 53 and 54, which were the subject of the claims in Dockets 13-E, *et al.*, consolidated, were ceded to the United States; and the Treaty of September 29, 1817, 7 Stat. 160, under which Royce Areas 87 and 88, which was the subject of the claims in Dockets 13-F, *et al.*, consolidated, were ceded to the United States.

ings at the 1795 Greeneville Treaty and the Statutes at Large version of the treaty itself, including specifically the signature page.

A difference does exist between the signature page of the handwritten copy of the 1795 Greeneville Treaty (Attachment A) and the signature page as printed in the Statutes at Large (Attachment B). In the Statutes at Large, published in 1846, the signature page, 7 Stat. at 54, reads, insofar as here pertinent, as follows:

Delawares of Sandusky

Haw-kin-pum-is-ka
Pey-a-mawk-sey
Reyn-tue-co, (of the Six Nations, living at Sandusky)

The Statutes at Large divided the remaining signers in the same manner; i.e., an italicized heading for the name of the tribe or group, followed by a list of the signers belonging to that tribe or group.

In the handwritten copy, the mark of each Indian appears in columnar form, and to the left of each mark is written the signer's name. Immediately to the left of the name is a vertical bracket which bracket encloses varying numbers of names included within the top and bottom arms of the bracket. The top and bottom arms of each bracket merge with the opposite arms of adjoining brackets to form one line. To the left of each bracket is written vertically the name of a tribe or group, thus indicating that each of the signers within a particular bracket were members of that tribe or group. Above and below the vertical name of each tribe or group is a double line.

Reyntueco made his mark at the bottom of the left-hand column of signers. There appears to be no dispute that he was the last Indian to sign the treaty. To the left of his mark is written "Reyn-tue-co (of the Six Nations living at Sandusky)". There is no bracket to the left of his name nor is there a tribal designation written vertically in the margin to the left of his name. Above his name enclosed by brackets are the marks and names of two Indians to the left of whose names is written vertically "Delawares of Sandusky." Below this vertically-written tribal designation is a double line. Reyntueco's is the only name on the signature page not bracketed with a tribal designation written in the margin next to it.

The Commission's decision that Reyntueco signed the 1795 Greeneville Treaty as a Delaware was based upon the version of the treaty printed in the Statutes at Large. The Commission has previously held, in the case cited in the instant motions for rehearing as one of those cases where the handwritten copy of the treaty was in evidence, that the "* * * Treaty of Greenville * * *, appeared to and was understood by the signatories as it now appears in the Statutes at Large." *See Peoria Tribe* v. *United States*, Dockets 99, *et al.*, 16 Ind. Cl. Comm. 574, 580 (1966). Furthermore, until the filing of these motions for rehearing the handwritten copy of the treaty was never introduced as evidence in these proceedings, nor did the Seneca-Cayugas seriously dispute the classification of Reyntueco as a Delaware signer based upon the Statutes at Large version of the treaty. The Seneca-Cayugas' assertion was limited to the fact that there were Six Nation Indians

(Mingoes) at the treaty proceedings (as the minutes of the treaty proceedings show) and that one of them apparently signed the treaty. However, the silence of the Seneca-Cayugas regarding the inclusion of Reyntueco with the Delawares of Sandusky on the signature page in the Statutes at Large was persuasive of their inability to refute the conclusion, reasonably to be drawn from the Statutes at Large version, that he signed the treaty as a Delaware.

We have considered the motions for rehearing and the evidence on which they are based and our conclusion is that the motions should be denied. The evidence so relied upon by the Seneca-Cayugas does not persuade us that a rehearing will serve any purpose in bringing to light any matters of which the Commission is not already apprised. The distinction in format between the signature pages will not, in light of the other evidence available to and considered by the Commission, support the proposition now urged in the motions for rehearing that Reyntueco signed, not as a Delaware, but rather as a representative of the Six Nations of Sandusky in their own right independent of the Delawares. Furthermore, references to the "Six Nations", "Six Nations of Sandusky" and "other Indians of Sandusky" in the minutes of the Greeneville Treaty proceedings do little to support plaintiffs' argument. The scattered references (Def. Exh. 31, Dockets 13-G, *et al.*, at 566, 567, 568, 570, 571, 575, 577 and 578) show at best that a few Six Nation Mingoes attended the treaty but the minutes taken as a whole show clearly that neither the Indians nor Wayne accorded them the status of contracting parties.

Our findings and conclusions previously entered with respect to the Seneca-Cayugas' predecessors were based upon the language of Greeneville Treaty, including the absence of any reference in the preamble or text thereof to the Six Nations or Mingoes. The treaty preamble recites those tribes considered contracting parties. At the conclusion of the text of the treaty it is specifically stated that it was "* * * the Sachems and War-Chiefs of the *before-mentioned* Nations and Tribes of Indians" (7 Stat. at 53; emphasis added) who signed the treaty.

In the case of *Sac and Fox Tribe* v. *United States*, 161 Ct. Cl. 189, 195 (1963), *cert. denied*, 375 U.S. 921 (1963) (*aff'g* Docket 83, 7 Ind. Cl. Comm. 675 (1959)), the Sac and Fox Tribe contended they were accorded recognized title to certain lands by virtue of the 1795 Greeneville Treaty. Although the instant case differs on its facts from the *Sac and Fox* case in that the Sacs and Foxes were admittedly not even present at the Greeneville Treaty proceedings, the following language of the Court in that case is, we believe, equally applicable as a statement of why we concluded here that the plaintiffs' predecessors were not contracting parties under the Greeneville Treaty. The Court there said:

> * * * Under its terms, only the named tribes were to be bound or benefited. The preamble recites that the federal representative met with the agents of 'the *said* tribes of Indians' (referring to the twelve signatory tribes) and agreed upon a treaty which, when ratified, was to be binding on the United States 'and the *said* Indian tribes' (emphasis added). The reconfirmed boundary was designated as the line 'be-

> tween the lands of the United States, and the lands of the *said* Indian tribes'; the ceded lands were given up by the '*said* Indian tribes'; certain rights of passage for United States citizens were allowed by 'the *said* Indian tribes'; trade was to be opened with 'the *said* Indian tribes'; United States and 'the *said* Indian tribes' forbade private revenge or retaliation; and previous treaties between the United States and 'the *said* Indian tribes, or any of them' were to become void (emphasis added). The United States, as its major concession, relinquished territorial claims 'in consideration of the peace now established and of the cessions and relinquishments of lands made * * * by the *said* tribes of Indians'; and a payment was made 'to the *said* Indian tribes,' with specified annual allowances to be paid in the future to the twelve signatories by name (emphasis added).

Just as the Sacs and Foxes were not one of "said" tribes so neither, as the treaty language shows, were the plaintiffs' predecessors.

For all of these reasons, we believe that despite the differences in format between the handwritten and printed versions of the treaty, Reyntueco "of the Six Nations, living at Sandusky" signed the treaty, along with those other Sandusky Indians who signed immediately before him, as one of the "Delawares of Sandusky." We further continue to believe, for the reasons stated above, that the plaintiffs' predecessors were not signatories to the 1795 Greeneville Treaty.

The accompanying order therefore denies the motions by the Seneca-Cayugas for rehearing in Dockets 341-C and 341-D.

BRANTLEY BLUE

Brantley Blue, Commissioner

We Concur:

JEROME K. KUYKENDALL

Jerome K. Kuykendall, Chairman

JOHN T. VANCE

John T. Vance, Commissioner

RICHARD W. YARBOROUGH

Richard W. Yarborough, Commissioner

MARGARET H. PIERCE

Margaret H. Pierce, Commissioner

Attachment A

(See Opposite ☞)

Attachment A

Attachment B

Chippewas.

Mash-i-pi-nash-i-wish, (or Bad Bird)
Nah-sho-ga-she, (from lake Superior)
Ka-tha-wa-sung,
Ma-sass,
Ne-me-kass, (or little Thunder)
Pe-shaw-kay, (or Young Ox)
Nan-guey,
Mee-ne-doh-gee-sogh,
Pee-wan-she-me-nogh,
Wey-me-gwas,
Gob-mo-a-tick,

Ottawa.

Che-go-nickska, (an Ottawa from Sandusky)

Putawatames of the River Saint Joseph.

Thu-pe-ne-bu,
Naw-ac, (for himself and brother A-si-me-the)
Ne-na-se-ka,
Kee-sass, (or Sun)
Ka-ba-ma-saw, (for himself and brother Chi-sau-gan)
Sug-ga-nunk,
Wap-me-me, (or White Pigeon)
Wa-che-ness, (for himself and brother Pe-da-go-shok)
Wab-shi-caw-naw,
La Chasse,
Me-she-ge-the-nogh, (for himself and brother Wa-wa-sek)
Hin-go-swash,
A-ne-wa-saw,
Naw-budgh,
Mis-se-no-go-maw,
Wa-we-eg-she,
Thaw-me, (or le Blanc)
Gee-que, (for himself and brother She-win-se)

Putawatames of Huron.

O-ki-a,
Cha-mung,
Se-ga-ge-wan,
Na-naw-me, (for himself and brother A-gin)
Mar-chand,
We-na-me-ac,

Miamis.

Na-goh-quan-gogh, (or Le Gris)
Me-she-kun-nogh-quoh, (or Little Turtle)

Miamis and Eel-River.

Pee-jee-wa, (or Richard Ville)
Coch-ke-pogh-togh,

Eel-River Tribe.

Sha-me-kun-ne-sa, (or Soldier)

Miamis.

Wa-pa-man-gwa, (or the White Loon)

Weea's, for themselves and the Piankashaws.

A-ma-cun-sa, (or Little Beaver)
A-coo-la-tha, (or Little Fox)
Francis,

Kickapoos and Kaskaskias.

Kee-aw-hah,
Ne-migh-ka, (or Josey Renard)
Pai-kee-ka-nogh,

Delawares of Sandusky.

Haw-kin-pum-is-ka,
Pey-a-mawk-sey,
Reyn-tue-co, (of the Six Nations, living at Sandusky)

Opinion of Indian Claims Commission Denying Motion

In presence of, (the word "goods" in the 6th line of the 3d article; the word "before" in the 26th line of the 3d article; the words "five hundred" in the 10th line of the 4th article; and the word "Pinkashaw" in the 14th line of the 4th article, being first interlined.)

H. De Butts, first A. D. C. and Sec'y to M. G. Wayne, Wm. H. Harrison, Aid-de-camp to M. G. Wayne. T. Lewis, Aid-de-camp to M. G. Wayne, James O'Hara, Quarter-Master Genl. John Mills, Major of Infantry, and Adj. Genl. Caleb Swan, P. M. T. U. S. Geo. Demter, Lieut. Artillery. Vigo. P. fris La Fontaine. Ant. Lasselle. H. Lasselle. Jn. Beau Bien. David Jones, Chaplain U. S. L. Lewis Beufait. R. Lachambre. Jas. Pepen. Baties Coutien. P. Navarre.

Sworn Interpreters.

Wm. Wells. Jacques Lasselle. M. Morins. Bt. Sans Crainte. Christopher Miller. Robert Wilson. Abraham x Williams. Isaac x Zane.

To the Indian names are subjoined a mark and seal.

Appendix D

Excerpts from Treaty of Greenville, 7 Stat. 49, August 3, 1795

TREATY OF GREENVILLE, 7 Stat. 49, BETWEEN THE WYANDOT, DELAWARE, SHAWNEE, OTTAWA, CHIPPEWA, POTAWATOMI, MIAMI, EEL RIVER, WEA, KICKAPOO, PIANKESHAW AND KASKASKIA TRIBES OF INDIANS AND THE UNITED STATES OF AMERICA

GEORGE WASHINGTON

President of the United States of America

To All To Whom These Presents Shall Come, Greting.

Whereas a Treaty of Peace and Friendship between the United States of America and the Tribes of Indians called the Wyandots, Delawares, Shawanoes, Ottawas, Chipewas, Potawatimes, Miamis, Eel River, Weea's, Kickapoos, Piankashaws, and Kaskaskias, was made and concluded on the Third day of August one thousand seven hundred and ninety five by Anthony Wayne, Major General Commanding the Army of the United States, duly authorized thereto, on the one part, and the Sachems and war chiefs of the before mentioned Nations and Tribes of Indians whose names are thereunto signed on the other part; which Treaty is in the form and words following viz:

ARTICLE V

To prevent any misunderstanding about the Indian lands relinquished by the United States in the fourth article, it is now explicitly declared, that the meaning of that

relinquishment is this: The Indian tribes who have a right to these lands, are quietly to enjoy them, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States; but when those tribes, or any of them, shall be disposed to sell their lands, or any part of them, they are to be sold only to the United States; and until such sale, the United States will protect all the said Indian tribes in the quiet and enjoyment of their lands against all citizens of the United States, and against all other white persons who intrude upon the same. And the said Indian tribes again acknowledge themselves to be under the protection of the said United States and no other power whatever.

Appendix E

Excerpts from Findings of Fact Submitted to the Commission on Behalf of Petitioner

Finding 10.

Seneca Use and Occupancy of Areas 53, 54, & 87 Prior to 1740

(a) Prior to 1700, the only tribes which appear to have any association with the areas of Northern Ohio were the Five Nations who had destroyed the Erie Indians who inhabited Northeastern Ohio and the surviving Eries were adopted or incorporated into the Five Nations.

(b) In the late seventeenth century, Cayuga Indians fished in the Guyahoga River and Seneca Indians traveled down the Ohio River.

(c) In 1701 and 1726 in treaties with the British the Five Nations or some of their members recited their conquests of the territory and included it in the description of their hunting grounds.

(d) No definitely documented villages can be located until the beginning of the period 1737 to 1759 when a group of Hurons (Wyandots) came from near Detroit in 1738 to "Sandoski" near which is present Castalia. After that date with the advent of the British and French traders and officials there is a growing record of use by native Indian groups predominantly the Iroquois, Delawares, Wyandots and Ottawas.

Excerpts from Findings of Fact Submitted to Commission

Evidence:

(a) D-X A 322, p. 2. "* * * by 1660 the Eries were among 'the different tribes whom [the Iroquois] have conquered' according to the Jesuit Father Jerome Lalement. Five Nations Iroquois policy—was to incorporate conquered peoples into the Iroquois population and 'the Requihronnons [Eries] who are the Cat Nation' were no exception."

(b) D-X B 10, p. 155. Lahontan in 1688 refers to "Bank of the River upon which the Goyogoans [Cayugas] were wont to fish for Sturgeon". The river was the Cuyahoga. LaSalle and Gelline met with the Senecas who told them of their trials down the Ohio. Kellogg, Early Narratives D-X A 54, p. 170, 188, 190.

(c) D-X A 16 p. 908-911
D-X A 38 pp. 799-801

(d) D-X A 322 pp. 35-36
D-X B 402 p. 10
D-X A 113 pp. 99-100
Findings #11 and 12 hereafter.

Excerpts from Findings of Fact Submitted to Commission

Finding 11.

Seneca Use and Occupancy
1740-1795

North and west of the Greenville Treaty line and within the State of Ohio, the ancestors of those Indians who now compose the Seneca Cayuga tribe lived, since a time prior to the American revolution and possessed and used in Indian fashion, either independently or in conjunction with particular tribes, certain portions of the ceded lands.

Evidence:

In 1743, Celeron reports "some Senecas, Onondagas and others of the Five Iroquois Village been seated themselves of late year at the White [Cuyahoga] River. D-X A 22.

In 1743, Navarre reports "Ten different tribes settled upon that river [Cayahoga] making altogether about five or six hundred men, namely the Senecas, Cayugas, Oneidas, Onondagos, Mohican, Loups, Moraignans, Ottawas, Abenakis of St. Francis and the Sauteux.—The number of Indians who have settled on this river increases every day, since hunting there is abundant, while on the other hand at their former homes, there is no more game." SC-X—D-X A 70.

In 1743 Narvarre reports finding "of that nation [Ottawas of Detroit] five or six cabins who have asked the Iroquois Senecas for a small piece of land in order to light a little fire". D-X A 70 p. 318.

In 1745 a French trader at Sandusky relates "we lodged at the home of the great Sonontoin [Seneca]. D-X A 75.

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Excerpts from Findings of Fact Submitted to Commission

In 1747 "The Irocois at the outlet of La Rivere Blanche". D-X A 74 p. 474.

In 1747 George Croghan refers to "a pair of ye Six Nations Ingans that has there dwelling on ye Borders of Lake Arey [Erie]. D-X A 73 p. 472.

Evans Map of 1755, D-X A 93, locates "Mingoes" on west bank of Cuyahoga 20-25 miles above mouth. D-X 322 p. 40.

In 1747 Joncaire reports "Hurons of Sandusky consider themselves Iroquois. Greater portion of their village children of Iroquois." D-X A 69 p. 146.

In 1748 the Hurons at Sandusky depart for "the White River to seek shelter among the Iroquois there". D-X A 69 p. 162.

In 1748 thirty Sandusky Warriors and their families were established near Kuskusky a series of 6-Nations Settlements on Beaver Creek. D-X A 233 p. 46, 47.

In 1751 Thomas Bourke, an English Trader at Cuyahoga says the country was within "the territory of the Five Nations which further extends divers leagues about it". D-X A 207, pp. 503, 504. D-X A 322 p. 54.

In 1755 "an Anonymous Draft of the Ohio from an Indian Account" (D-X B 100) legends in the area south of Lake Erie "Six Nations moved four years ago to Tuighsogrhruntie". D-X A 322 p. 57.

In 1755 Delery reports "Two cabins at Conchake one belonging to some Caughnawaga Mohawks and the other to some Five Nations Iroquois." D-X B 402, p. 14. D-X A 113.

He previously observed at Anioton "An angier [Mohawk] wintering three days march from this village

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arrived. He was going to Sandusky to trade". D-X A 113, p. 102, 103.

The Mitchell Map of 1755 legends the South Shore of Lake Erie "The Antient Eries were exterpated by the Iroquois upwards of 100 years ago, ever since which time they have been in possession of L. Erie" and Canahogue [Cayahoga] is described as "the seat of War, the Mart of Trade and chief Hunting Grounds of the Six Nations on the Lakes". D-X 351.

In 1756, James Smith who had been captured in Pennsylvania in 1755 was taken to Tullihas, on the "west branch of the Muskingum [about 15 miles south of Area 54] inhabited by Delawares, Caughnawagas and Mohicans. He was adopted into a Mohawk family and quickly learned to speak Mohawk. D-X B 55 pp. 175, 180, 186, 191.

The two chiefs at Tullihas were Tecanyerighto, "alias Pluggy" a warrior and Assallecoa "alias Mohawk Solomon". D-X A 322 p. 67. Each of these chiefs subsequently are identified with Mingo towns bearing their names. See 1775 reference to Pluggy's town below and D-X B 193 for Solomon's town.

During the four years of his stay with his Mohawk family, (1756-1759), Smith traveled on winter hunting trips with them on the major portion of areas 53, 54 and Eastern 87. D-X A 322 pp. 67-78, pp. 94-96. D-X B 402 pp. 21-26.

In 1761 Sir William Johnson on his return from Detroit reports meeting "Aaron" and a party of Mohawks who told Sir William that he might go to "Sandusky" to "winter". Near Niagaria Johnson also met some Cayugas who "were going a-hunting to

Sandusky". D-X B 402 p. 42. D-X B 72 pp. 264, 267, 268.

In 1762 Aaron evidently wintered at Sandusky. D-X B 73 p. 33.

In 1765, Croghan reports 300 Wyandots, Mohicans and Caughnanaga Mohawk Warriors living in "villages near Sandusky with their hunting grounds on the head branches of the Scioto". D-X B 97, p. 2. D-X A 155. D-X A 156.

In 1767, Croghan at Sandusky met "a number of Wyandotts or Hurons with a number of Mohickons, Shawanase and Connewagoe Indians" who requested that traders "reside among them." D-X B 100 p. 36-37.

In 1769 Croghan noting a westward movement of Indian population out of western Pennsylvania and into the Ohio Valley reported a "Party of Ohio Senicas, Shawanese, and Delawares" had gone to Detroit and "requested of the Hurons to give their people some Lands near Quiyahaga [Cuyahoga] to Plant and Hunt and promised that they (the Ohio Senecas, Delawares and Shawnees) "would go and remove their people" from the Susquehanna River. D-X A 322 p. 139.

In 1770 Heckweder notes two "Mingo" or "Seneca" towns "Darby's Town" and "Hell Town". Darbys Town was on upper Sandusky River and Hell Town on the Clear Fork of Mohican River. D-X A 153 p. 72.

In 1775 Captain James Wood accompanied by Simon Gertz arrived "at the Seneca Town where we found Logan—with several of the Mingoes who had been prisoners at Fort Pitt". Dr. Vogelen identifies this town as "Sea Caium T" or "Seecaium" on the north bank of the upper Scioto River. D-X B 402 p. 58-59.

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Excerpts from Findings of Fact Submitted to Commission

In 1775, Col. Richard Butler accompanied by "Kyasota" (Kiasutha) a well known Allegany Seneca Chief —proceeded to Pluggy's Town at Mingo Village, 5 miles south of Area 87. D-X B 110 p. 7-15.

In 1776, William Wilson refers to "New Hell Town" on the Sandusky River 25 miles up from Upper Sandusky near present Bucyrus. D-X B 115 p. 2. D-X B 402 p. 60.

In 1778 there is reported the Mingo Town on the headwaters of the Great Miami River. Simon Kenton crossing the Scioto River six miles east of present Kenton, he met Logan the Mingo Chief at the latter's winter hunting camp. D-X B 109 p. 107. D-X B 108 pp. 103, 127-131.

In 1778 Mingoes were living at "the town situated between the two creeks—the little Scioto". D-X B 181 p. 450-451.

In 1783, Delaware Chief Thomas Armstrong of the Delawares had moved to "Hell Town" together with some Mingoes and Mohawks and established "Greentown" on the Black Fork of the Mohican River and it was referred to as a "Delaware and Mingo Town". D-X A 158, pp. 22-24. D-X A 191. D-X A 244.

In 1787 "Mingoes" or "Senecas" had agreed "to go to the mouth of Sandusky river to live and plant corn this spring". D-X 402 p. 121.

In 1787, Zeissberger refers to "two Mingoes—from Sandusky, where some dwell". D-X B 194 p. 369.

John Johnson, the Indian agent at Fort Wayne and Picqua relates that "at about the time of the American Revolution, five hundred Senecas by permission of the

Wyandots, located on the Sandusky river within the limits of what is now Seneca County Ohio". D-X 402 p. 121.

In 1788 two of General St. Clair's spies visited a "little Seneca Village called the Wasp's Town, between the two Sanduskys" Wasp's Town was near present Teffin. D-X B 256 p. 2, D-X 402 p. 122.

In 1791 Brickell, a Pennsylvania Captive was taken to a "Seneca town" which he said was "where Fort Seneca since stood". D-X B 226, p. 45-46.

Excerpts from Findings of Fact Submitted to Commission

Finding 12.

Seneca Use Subsequent to Greenville

a. Subsequent to the Treaty of Greenville and up to and past treaty time, the Senecas continued to use the eastern portions of Area 53 in the Cuyahoga region and hunted throughout the northern half of the area in conjunction with the Ottawas and Wyandots. They continued to occupy and hunt in the western portion of Area 54 in conjunction with the Wyandots. They also continued residing in and hunting on the Sandusky and Scioto Rivers in conjunction with the Wyandots and resided in and hunted in the southwestern portion of Area 87 in conjunction with the Shawanee.

b. During the period 1805-1817 a substantial number of "Senecas" were living along the Sandusky River and in southwestern Area 87.

Evidence:

a. In 1796, Indians at Cuyahoga River "who had been west hunting" "these were Senecas" who lived at Grand River. D-X A 311.

In 1798 Tuscaroras camped at south end of Cuyahoga—Tuscarawas portage. D-X A 78 p. 291.

Judge Baar, a Cleveland historian, reports on the Indian pattern of use as follows "In the fall, the Senecas, Ottawas, Delawares and Chippewa resorted here [Cleveland] and—dispersed to hunt through the winter, on the Cuyahoga, the Grand River, Mahoning, Tus-

carawas, Killbuck and Black Rivers. In the spring they returned with their furs and game and after trafficking away their stock, launch their bark canoes to repair to Sandusky plains and the Miami prairies for the summer." D-X A 78, pp. 261-262. D-X A 315, pp. 1-5.

1798—Zeissberger and Mortimer note on Black River two miles from its mouth "a few families of Mohawks" who had lately "made a settlement". He had earlier noted a settlement of Onondagas near the mouth of Portage River. P-X A 269, p. 85. D-X B 233, pp. 78-79.

The presence of "Seneca" or "Chief Stigwanish", who was reported to have his home in Seneca County, Ohio, is frequently noted by surveyors and other visitors to the Cuyahoga area. They report meeting him at hunting camps or at his established settlement and orchard. D-X A 78 pp. 416-419, D-X A 315. D-X A 233 pp. 391-396.

1804—Br. Oppelt mentions "a certain Minque, Tawalos, who lives here at the [Huron] river".

1801-1803—The Mohawk settlement on Sandusky river is noted by the missionaries Hughs and Scott as being two miles below Lower Sandusky. Hughs also reports on the Seneca Town at present Fort Seneca. D-X B 318, pp. 2, 5, 6. D-X B 319, pp. 4-5.

In 1812, when the Senecas fled from the "Minque" town on the river to Upper Sandusky, they numbered 100 Warriors (400 persons). D-X B 366.

1813—General William Henry Harrison built his headquarters at Fort Seneca "at the Seneca Towns."

The treaty of July 22, 1814 (7 Stat. 118) in Article III recites "The Wyandot tribes and the Senecas of Sandusky and Stoney Creek,—"

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b. 1815—Benjamin F. Stickney, Indian Agent, refers to the Mingoes then living at Stony Creek (Lewiston) as numbering about 600 persons. The Mingo had moved there in 1805 from present Mingo, Ohio, which is about 15 miles south of Area 87. D-X B 336, pp. 1-2. D-X B 385, 143a, 143c, 144a, 144d, B-X B 386, pp. 101-107.

"1815—Stickney reports there were about as many Senecas, Cayugas, Mohawks and Delawares combined as there were Wyandots" D-X B 402 p. 222.

1816—John Johnson, the Indian agent, gives the Sandusky Seneca population "on the Water of the Lands of Sandusky of Senecas (and they are increasing from New York) * * * 400". D-X B 324 p. 92. Later he raised it to "450". D-X B 340 p. 2.

In 1819, "Seneca Towns [on the] Sandusky River between Upper and Lower Sandusky" had a population of 348 Senecas.

In 1819 Johnson lists the population of Lewistown as 169 Shawnees and 203 Senecas.

Jeddediah Morses' Indian reports for 1820 at page 362 gives the following population:

Wyandots	542
Shawnees (Lewiston)	169
Senecas (Lewiston)	203
Senecas (Sandusky)	348

Excerpts from Findings of Fact Submitted to Commission

Finding 13.

Continued Use of Area 87

After the cession of 1805 the principal users of areas 53 and 54 to wit, Delawares, Senecas, Wyandots and Ottawas moved to and concentrated their numbers in the areas in which they had previously been established.

(a) The Delawares moved to the White River in Indiana and the other places to the west.

(b) The Senecas consolidated along the Sandusky River, in the headwaters of the Scioto River, and in the headwaters of the Miami River.

(c) The Wyandots continued to reside on and hunt along the Sandusky river and the upper reaches of the Blanchard River and probably within portions of Area 66.

(d) The Ottawas were by then concentrated on the lower portion of the Maumee river and in a village on the Blanchard River.

Evidence:

(a) Hodge, V. 1, p. 385

(b) Finding 12 above and see SC-X 51 and D-X B 403

(c) D-X B 403. D-X C 281

(d) O—X 511 and D-X B 403.

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Excerpts from Findings of Fact Submitted to Commission

Finding 14.

United States Recognition of Seneca Interest in Area 87

(a) Lewis Cass and Duncan McArthur, the United States Commissioners who negotiated the treaty reported to the Secretary of War that the Wyandots, Senecas and Shawnees were the tribes who had rights in area 87 and their ancestors had "occupied it for generations".

(b) The Committee on Public Lands of the Senate in reporting the Treaty with amendments for approval by the Senate in analyzing the acreage obtained and the consideration paid referred to the Senecas "as co-partners of the Wyandots".

Evidence:

(a) "The Wyandots who owned it, and the Senecas and Shawnees who live upon it"—

"The ancestors of some of these Indians have occupied it for generations."—

"In fact the whole of the Wyandots, and all the Shawnees and Senecas in this quarter have made the last attempt to preserve the inheritance of customs and of lands transmitted to them by their ancestors." SC-X—AS-P 1 A II p. 138-139.

(b) "Tract ceded by the Wyandots 3,360,000
Regranted to the Chiefs in trust—12 miles square 92,160

Add, one square Cranberry swamp	640
To individuals of the tribe, and adherents in sevaralty	5,640
To the Senecas, who made no cession, but are considered as co-partners with the Wyandots	30,000

SC-X—AS-P 1 A II p. 148-150.

Excerpts from Findings of Fact Submitted to Commission

Finding 15.

The Seneca Title

a. The Senecas together with the Ottawas and Wyandots jointly had possession exclusive of other tribes in all of Area 53 which lies north of a line drawn approximately from the Cuyahoga-Tuscarawas portage dividing the streams flowing south and east into the Muskingum and its tributaries from the streams flowing north into Lake Erie or west into the Sandusky and Scioto rivers.

b. The Senecas jointly with the Wyandots had possession exclusive of other tribes in that portion of Area 54 lying West of the Black fork of the Mohican River.

c. The Senecas jointly with the Wyandots had possession, exclusive of other tribes, of all that portion of Area 87 which lies eastward of a line which proceeds from the mouth of the Portage river to Wood County and then south to the Greenville treaty line.

d. The Senecas jointly with the Shawnee had possession exclusive of other tribes of that portion of Area 87 as is embraced within Shelby, Logan, Hardin and Allen Counties as they existed in 1820.

Evidence:

Findings 5, 10, 11, 12, 13 and 14.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Nos. 75-964 and 75-965

SENECA-CAYUGA TRIBE OF OKLAHOMA, *et al.*,
Petitioners,

v.

THE UNITED STATES OF AMERICA,
Respondent.

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS IN NOS. 75-964 AND 75-965

ROBERT C. BELL, JR.
528 Main Street
New Canaan, Conn. 06840

Attorney for
Hannahville Indian Community,
and other Eastern Potawatomi
Groups in Opposition

ABE DUPLICATORS, INC.—1732 Eye Street, N.W.—Washington, D.C.—298-8637

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THE UNITED STATES OF AMERICA,
Respondent.

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS IN NOS. 75-964 AND 75-965

THE QUESTION

Did the Seneca Cayuga Tribe of Oklahoma or its antecedents, which were at one time part of the Six Nations of what is now New York State, have any interest, recognized or possessory, in any portion of (a) the lands ceded by the Treaty of July 4, 1805 at Fort Industry (7 Stat. 87) (Royce Areas 53 and 54 in northern Ohio westerly and southerly of Cleveland)(Petition No. 75-964), or (b) lands ceded by

BLEED THROUGH

the Treaty of September 29, 1817 at the Rapids of the Miami of Lake Erie (7 Stat. 160) (Royce Areas 87 and 88 in northwestern Ohio, southern Michigan and eastern Indiana southerly and westerly of Toledo) (Petition No. 75-965)?

STATEMENT OF THE CASE

The issue is a complex question of fact and not a matter of law. As stated by the United States Court of Claims in both Appeal No. 3-74 and 4-74, both dated May 30, 1975:

> ". . . . the findings as made support the decision and order of the Commission and the same are supported by substantial evidence. We conclude further that there is no error of law in the decisions. . . ."

The question or questions presented here were substantively decided December 8, 1975, when petitions for writs of certiorari were denied by the Supreme Court in Nos. 75-389 and 75-438 and 75-458. Such petitions involved ten different sets of legal counsel and some sixteen tribes and/or groups of Indians. Said petitions related to the Treaty of Greenville of 1795 (7 Stat. 49). Said Treaty was not joined in by the Seneca-Cayuga or Six Nations, although it appears that "Reyntueco, (of the Six Nations, living at Sandusky,)" assented thereto by affixing his mark. The Indian Claims Commission exhaustively considered the matter in its opinion of September 19, 1973 (see pages 48a-49a and 50a-51a of appendices to petitioner's respective petitions). The Commission concluded:

> "For all of these reasons, we believe that despite the differences in format between the handwritten and printed versions of the treaty, Reyntueco 'of the Six Nations, living at Sandusky' signed the treaty, along with those other Sandusky Indians who signed immediately before him, as one of the 'Delawares of Sandusky.' We further continue to believe, for the reasons stated above, that the plaintiffs' predecessors were not signatories to the 1795 Greenville Treaty."

There have been many changes and regroupings of Indian tribes and groups. Proof of such is often difficult, and the petitioner has not carried the burden necessary in this case. In any event the Seneca-Cayuga and Six Nations were indigenous to New York State localities. Except for raids and sorties as far west as Minnesota in search of beaver pelts, they had no independent presence or proper claim to land areas essentially held, used and owned, in both the aboriginal and modern sense, by midwestern Indian tribes.

As the Court can see, the case at bar is essentially a dispute between Indian tribes or groups. It is not a dispute between the United States or the U.S. Department of Justice and Indians. It arises under the Indian Claims Commission Act of 1946, and relates to claims more than a century and a half old. Resolution of the

same should not be further delayed by pointless appeals and petitions.

Respectfully submitted,

ROBERT C. BELL, JR.
528 Main Street
New Canaan, Conn. 06840

Attorney for
Hannahville Indian Community,
Forest County Potawatomi Community,
Potawatomi Indians of Indiana and Michigan Incorporated.

February 7, 1976

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

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ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

JOINT MEMORANDUM OF WYANDOT TRIBE, SAGINAW CHIPPEWAS AND SHAWNEE TRIBE OPPOSING CERTIORARI

RODNEY J. EDWARDS
EDWARDS, EDWARDS & BODIN
800 First National Bank Building
Duluth, Minnesota 54802
Counsel for Respondent Wyandot Tribe Petition No. 75-964 and 75-965

JAMES FITZHARRIS
700 Lake Shore Drive
Escanaba, Michigan 49829
Counsel for Respondent Saginaw Chippewas Petition No. 75-964
and
Counsel for Respondent Shawnee Tribe Petition No. 75-965

February, 1976

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to the United States Court of Claims

JOINT MEMORANDUM OF WYANDOT TRIBE, SAGINAW CHIPPEWAS AND SHAWNEE TRIBE OPPOSING CERTIORARI

Wyandot Tribe (Ind. Cl. Com. Docket 139) and Saginaw Chippewas (Ind. Cl. Com. Docket 13-E) are respondents in Petition No. 75-964 and are two of the five Indian tribes which the Indian Claims Commission determined held recognized title to an undivided one-fifth interest

each in Royce Areas 53 and 54, which were ceded to the United States by the Fort Industry Treaty of July 4, 1805 (Petition No. 75–964, 30 Ind. Cl. Comm. 8, 21–22, 35–36, Pet. App. B, 20a, 35a–36a). The Court of Claims affirmed this determination of the Commission (Pet. App. A, 1a–2a).

Wyandot Tribe (Ind. Cl. Com. Docket 141) and Shawnee Tribe (Ind. Cl. Com. Docket 64–A) are respondents in Petition No. 75–963 and two of the four Indian tribes which the Indian Claims Commission determined held recognized title to designated undivided fractional interest each in Royce Area 87, which was ceded to the United States by the treaty of September 29, 1817 (Petition No. 75–963, 30 Ind. Cl. Com. 337, 353–354, 368–369, Pet. App. B, 21a–22a, 37a–38a). The Court of Claims affirmed this determination of the Commission (Pet. App. A, 1a–2a).

The statements of petitioner was prepared in disregard of the applicable principles of review that the evidence is to be viewed and construed favorably to the prevailing party below, and all reasonable inferences of which the evidence is fairly susceptible should be drawn in support of, and not against, the Judgment rendered below.

The cases do not warrant the attention of the court. They were decided upon the determination of questions of fact applicable only to the instant parties to resolve a single controversy. The decisions below conflict with nothing and establish no precedents. The questions the petitioner would present were fully considered and fairly decided below, and none other than the parties are interested in or affected by the judgment.

Accordingly, the petitions for a writ of certiorari should be denied.

Respectively submitted,

RODNEY J. EDWARDS
Counsel for Respondent Wyandot
Tribe Petition No. 75–964 and
75–965

JAMES R. FITZHARRIS
Counsel for Respondent Saginaw
Chippewas Petition No. 75–964
and
Counsel for Respondent Shawnee
Tribe Petition No. 75–965

February, 1976

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-964

SENECA-CAYUGA TRIBE OF OKLAHOMA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 75-965

SENECA-CAYUGA TRIBE OF OKLAHOMA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner[1] contends that the Indian Claims Commission and the Court of Claims erred in denying its claims for compensation based upon recognized title to land allegedly acquired by treaty with the United States and upon its non-exclusive possession of commonly used and occupied land.

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[1]Petitioners are the Seneca-Cayuga Tribe of Oklahoma and Peter Buck, *et al.*, suing in a representative capacity on behalf of members of the tribe. For convenience, all petitioners in these cases will hereafter be referred to simply as petitioner.

The Seneca-Cayuga Tribe of Oklahoma is the petitioner in each case. The two petitions for a writ of certiorari were filed simultaneously to seek review of orders of the Court of Claims denying, on similar grounds, petitioner's claims for compensation arising under two separate treaties (Pet. No. 75-964, p. 1; Pet. No. 75-965, p. 1). Each of those treaties concerned the cession to the United States of certain lands previously relinquished to the Indian tribe parties in the Treaty of Greeneville of August 3, 1795, 7 Stat. 49. A description of the relevant provisions of that treaty is contained in our Memorandum in Opposition to the petition for a writ of certiorari in *James Strong, et al.* v. *United States*, certiorari denied, No. 75-389, December 8, 1975.[2]

1. Petitioner in No. 75-964 is one of eleven Indian tribes whose overlapping claims to the lands ceded to the United States in the Treaty of Fort Industry of 1805, 7 Stat. 87, were consolidated for trial before the Indian Claims Commission. The Commission concluded that none of the claimants, including petitioner, had established aboriginal title to any portion of the ceded lands, over which no tribe maintained actual, exclusive and continuous use or occupancy "for a long time" prior to 1805 (Pet. No. 75-964 App. B, pp. 34a-35a). It further held that under the Treaty of Greeneville, various signatory tribes had recognized title to Royce Areas 53 and 54 (Pet. No. 75-964 App. B, pp. 14a-16a, 32a-36a), and awarded undivided one-fifth interests in those lands to the Delaware, Pottawatomie, Wyandot, Ottawa and Chippewa Tribes (Pet. No. 75-964 App. B, pp. 20a, 35a-36a). It also found that petitioner did not have recognized title to these lands because its predecessors in interest were not signatories of the Treaty of Greeneville and therefore acquired no rights in the lands therein relinquished by the

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[2] We are serving a copy of our memorandum in that case on petitioner's counsel.

United States (Pet. No. 75-964 App. B, pp. 10a, 12a, 15a-16a). Since only signatory tribes to the Treaty of Greeneville were accorded rights thereunder, *Sac and Fox Tribe* v. *United States*, 315 F.2d 896 (Ct. Cl.), certiorari denied, 375 U.S. 921, the Commission held that petitioner was not entitled to compensation for lands relinquished to the Indians in that Treaty but ceded back to the United States in 1805. It therefore dismissed petitioner's claim (Pet. No. 75-964 App. B, p. 35a), and denied its petition for rehearing (Pet. No. 75-964 App. C, pp. 40a-52a). On interlocutory appeal, the Court of Claims affirmed, one judge dissenting (Pet. No. 75-964 App. A, pp. 1a-3a).

Petitioner contends (Pet. No. 75-964, pp. 9-11) that its predecessors in interest were signatories of the Treaty of Greeneville, thereby entitling it to share in the compensation to be awarded for the later cession of those lands by the Indian tribes. Petitioner argues that one Reyntueco signed that treaty in a representative capacity on behalf of its ancestors, among other tribes, and that it therefore was a party to that Treaty, although its ancestors were not described as parties thereto in the preamble of the treaty (Pet. No. 75-964 App. C, p. 50a). But the Commission duly considered the capacity in which Reyntueco had signed the treaty and concluded that he did not represent petitioner's predecessors (Pet. No. 75-964 App. B, pp. 25a-26a, App. C, pp. 46a-51a). The Court of Claims implicitly affirmed this finding on appeal. In the absence of an exceptional showing of error, this Court should not consider petitioner's challenge to the sufficiency of the evidence on this factual issue. *E.g.*, *Graver Tank & Mfg. Co.* v. *Linde Air Products Co.*, 336 U.S. 271, 275; *Radio Corp.* v. *United States*, 341 U.S. 412, 415.

Petitioner also contends (Pet. No. 75-964, pp. 3-4) that the Indian Claims Commission erred in holding that petitioner did not have aboriginal title to Royce Areas 53 and 54. Petitioner concedes (Pet. No. 75-964, p. 5) that its

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ancestors did not enjoy exclusive use and occupancy of these lands,[3] but argues that the joint and amicable use of these lands by various Indians tribes constitutes a compensable interest under the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. 70, *et seq.*[4]

As we discussed in our Memorandum in Opposition in No. 75-389, the test of aboriginal title based on exclusive possession that was employed in this litigation has been repeatedly approved, both before and after enactment of the Act.[5] The Court of Claims properly refused to redefine that concept, which has been held to meet the purposes and objectives of the Act.

Aboriginal title is not an interest protected by the Fifth Amendment;[6] petitioner's right to compensation is statutory, deriving from the Indian Claims Commission Act. Most of the litigation arising under that Act has been concluded utilizing the rules applied by the Court of Claims

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[3]Petitioner argues (Pet. No. 75-964, p. 13) that the Commission ignored evidence it submitted in support of its proposed findings of fact concerning its predecessors' use and occupancy of the ceded lands. These proposed findings, however, are addressed solely to *joint* use and occupancy of the land. Petitioner made no claim of exclusive use and occupancy of any portions of Royce Areas 53 and 54.

[4]Under the exclusive possession theory, two or more tribes can nonetheless establish aboriginal title to an area if they shared the land in a close "joint and amicable" relationship. See *Sac and Fox Tribe* v. *United States*, 315 F. 2d 896, 903 n. 11 (Ct. Cl.), certiorari denied, 375 U.S. 921. However, petitioner does not contend that a close and intimate political and social confederacy sufficient to invoke this exception to the general rule existed among the tribes who occupied these lands.

[5]Memorandum for the United States Opposition, No. 75-389, p. 4.

[6]*Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272, 279.

in this case. Petitioner has advanced no compelling arguments to show why the definition of joint occupancy sufficient to demonstrate aboriginal title should now be substantially broadened.[7]

2. In No. 75-965 petitioner challenges the finding of the Indian Claims Commission that under the Treaty of Greeneville, various tribes held recognized title to Royce Areas 87 and 88, as a result of which it awarded unequal, undivided interests in Royce Area 87 to the Wyandot, Ottawa, Shawnee and Delaware tribes (Pet. No. 75-965 App. B, pp. 36a, 37a-38a).[8] As in No. 75-964, the Commission held that petitioner did not have recognized title to these lands because Reyntueco did not sign the Treaty of Greeneville on behalf of its predecessors in interest and that they therefore acquired no rights under that treaty (Pet. No. 75-965 App. B, pp. 13a-14a). Accordingly, the Commission dismissed petitioner's claim (Pet. No. 75-965 App. B, p. 37a), and denied its petition for rehearing (Pet. No. 75-965 App. C, pp. 42a-54a). On interlocutory appeal, the Court of Claims affirmed, one judge dissenting (Pet. No. 75-965 App. A, pp. 1a-2a).

Petitioner's contention (Pet. No. 75-965, pp. 9-11) that the Indian Claims Commission incorrectly determined that its predecessors in interest were not signatories of, and acquired no rights under, the Treaty of Greeneville is identical to its claim in No. 75-964 (Pet. No. 75-965, p. 12), which we have addressed at pp. 2-3, *supra*.

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[7] This Court has denied review this Term in two other cases that presented identical issues. *James Strong, et al.* v. *United States*, *supra*; *Pottawatomie Tribe of Indians, etc.* v. *United States*, certiorari denied, No. 75-438, December 8, 1975.

[8] The Commission also awarded equal, undivided interests in Royce Area 88 to the Chippewa, Ottawa and Pottawatomie Tribes (Pet. No. 75-965 App. B, p. 38a). The Commission's decision with respect to Royce Area 88 is not challenged, since petitioner asserted no claim to those lands (Pet. No. 75-965, p. 7).

Petitioner also contends (Pet. No. 75-965, pp. 3-4) that the court below erred in failing to award it aboriginal title to portions of Royce Area 87, even though it concedes (Pet. No. 75-965, p. 5) that use and occupancy of that land was not exclusive. But the Commission concluded that none of the various claimants held aboriginal title to any portion of Royce Area 87 because no tribe had proved that it maintained exclusive use and occupancy of a definable portion of that land "for a long time" prior to the 1817 cession (Pet. No. 75-965 App. B, pp. 13a-14a). Petitioner does not challenge the application of this well-settled principle to these lands but here suggests as it did in No. 75-964, that this Court formulate a new rule of aboriginal title. The reasons why the present definition of joint occupancy sufficient to demonstrate aboriginal title should not be substantially broadened are set forth at pp. 3-5, *supra*.

It is therefore respectfully submitted that the petitions for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1976.